

No. 11662-11666

United States
Circuit Court of Appeals
For the Ninth Circuit.

PHILLIP HIMMELFARB,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

SAM ORMONT,

Appellant,

vs.

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Transcript of Record

IN FOUR VOLUMES

VOLUME II

Pages 451 to 888

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(Testimony of Ernest Link.)

Cross-Examination

By Mr. Robnett:

Q. Mr. Link, as I understand, you kept Mr. Ormont's, that is, the Acme Meat Company's, books from sometime in 1931 until the early part of 1945?

Mr. Katz: If the Court please, may I interrupt at this point to say that I interpose an objection to every question that counsel for Mr. Ormont asks and to every answer that is made thereto as not binding upon this defendant; and may the same understanding pertain with respect to the cross-examination as pertains to the direct?

The Court: In other words, you make the objection now to this question?

Mr. Katz: Yes, on behalf of the defendant Himmelfarb.

The Court: And without the necessity of repeating the objection to each question the objection will be sustained.

Mr. Katz: Thank you. [186]

The Court: And it will be deemed to have been made with the same ruling.

Mr. Strong: Does that mean that the answer does not apply to Himmelfarb?

The Court: Unless the answer does apply to Himmelfarb and unless it is obvious from the answer.

Mr. Robnett: Will you read the question?

(The question referred to was read by the reporter as set forth above.)

The Witness: Yes, I did.

(Testimony of Ernest Link.)

Q. (By Mr. Robnett): You are the one who opened up the first set of books for the Acme Meat Company, are you not? A. Yes.

Q. And at the time that you opened them up, if you know, who besides Mr. Ormont was engaged as a party to the books, that is, of the Acme Meat Company?

A. There was one partner, Frank Salter.

Q. And he was there in '31, was he?

A. Yes.

Q. At that time there was a partnership, wasn't there, between Mr. Ormont and Mr. Salter and they did business as the Acme Meat Company?

A. Yes.

Q. Where was their place of business at that time? [187]

A. On the premises of the United Dressed Beef Company at 4360 South Soto Street, Los Angeles.

Q. How long did they continue business at that address?

A. Until approximately 1942 at that address.

Q. I will ask you this, isn't it a fact that they stayed there until August 1943 and in August '43 they moved over to the Harmon Packing Company at 3305 East Vernon Avenue, Vernon, California?

A. They did move there. I may be wrong on the exact date of the moving.

The Court: You say they didn't?

The Witness: They did.

The Court: They did move there?

The Witness: Yes.

(Testimony of Ernest Link.)

Q. (By Mr. Robnett): Now I will ask you also if it isn't a fact that they stayed at that latter address, 3305 East Vernon Avenue, until about May 1, 1944? A. That is not correct.

Q. It is not? A. No.

Q. When did they leave the address at 3305 East Vernon Avenue?

A. The partnership was dissolved before they left there. It is not there any more. It was Sam Ormont alone. [188]

Q. You mean the two of them?

A. That is correct.

Q. When was it that that partnership was dissolved, to your knowledge?

A. To my best recollection, that must have been in 1942.

Q. Do you have anything that fixes your recollection definitely on that?

A. Only the records of the Acme Meat Company.

Q. I am going to ask you if it isn't true that their dissolution was March 31, 1943.

A. Well, I would be wrong by at least three months.

Q. Now is it not your opinion that that was about the time that they dissolved, March 31, 1943?

A. Yes.

Q. Now therefore at that time they were at 3305 East Vernon Avenue? A. Yes.

Q. After that dissolution and on about May 1, 1944, is it not a fact that Mr. Ormont, who was then doing business as Acme Meat Company, moved to

(Testimony of Ernest Link.)

the Southern California Meat Company at 3301 East Vernon Avenue? A. Yes.

Q. Just a door or two from where they had been, wasn't it? [189] A. That is right.

Q. And isn't it also a fact that Mr. Ormont, doing business as Acme Meat Company, moved from 3301 East Vernon Avenue, Vernon, California, on or about January 11, 1945, to Imperial Highway and Garfield Avenue? A. Yes.

The Court: Let me see. Who moved to the Southern California Meat Company?

Mr. Robnett: Ormont.

The Court: In 1943?

Mr. Robnett: 1944, your Honor.

The Court: Then he moved from there to——

Mr. Robnett: Imperial Highway and Garfield Avenue.

Q. Now, Mr. Link, during those years that you were keeping the books for the Acme Meat Company, did you have any assistance or help whatsoever in keeping the books?

A. Outside of vacation periods, where the work would be done by someone else, I think it was once or twice that that occurred in those years, and outside of occasional help from my wife when I was very busy, who would check the bills also with me, outside of that I have done the work alone.

Q. You are a married man? A. Yes.

Q. And your wife did help you at times in connection with the books of the Acme Meat Company?

A. Yes. [190]

(Testimony of Ernest Link.)

Q. And that was during the vacation years, was it?
A. That was in the early years.

Q. Did she help you any in 1942? A. No.

Q. None at all? A. No.

Q. 1943? A. No.

Q. 1944? A. No.

Q. 1945? A. No.

Q. She didn't do a thing on the books during that time?
A. That is right.

Q. Now this particular work you were doing for the Acme Meat Company was merely part-time wasn't it?
A. Yes.

Q. Are you a regular bookkeeper? Were you during those years?

A. Yes, I am a regular bookkeeper.

Q. Were you keeping books for someone else during that same period of time? A. Yes.

Q. Who, for instance?

A. For the Coast Packing Company, for the Harmon [191] Packing Company, for the Vernon Packing Company, for the A. Mueller Packing Company in Norwalk, for the United Dressed Beef Company, for the Pioneer Provision Company, for Aaron & Ben Linnion, and for Ben Ginsberg.

Q. Did you have any full daytime job for any concern during any of the years from '31 to '45?

A. Yes.

Q. When you were keeping books for Mr. Ormont and the Acme Meat Company? A. Yes.

Q. Where did you work in the daytime?

A. At the United Dressed Beef Company.

(Testimony of Ernest Link.)

Q. And that was how many hours a day which you were supposed to devote there?

A. Eight hours.

Q. And you did so, did you? A. Yes.

Q. You did that over a course of years, did you?

A. Oh, yes.

Q. And are you still doing it? Are you still working there? A. No.

Mr. Strong: May we have the years fixed, your Honor?

Mr. Robnett: Yes, I will ask that. [192]

Q. What years did you work for that concern at eight hours a day?

A. From 1931 to 1934, for the United Dressed Beef Company; from 1935 until 1937 for the Vernon Packing Company, and for shorter periods later on for the Coast Packing Company; that was for a month or two during vacation times, I have gone in there and worked for a full day, for a stretch of a month or two months.

Q. During 1942 were you working full time for any concern?

A. I believe I was working at that time for two or three months for the Coast Packing Company.

Q. Do you remember what months they were?

A. It was in the summer months; possibly June, July and August.

Q. During the other months of that year did you work for anyone full time? A. In 1942?

Q. '42.

A. To the best of my knowledge, no.

(Testimony of Ernest Link.)

Q. Did you, during 1942, divide your daytime among various persons or companies that you have named that you were working for, other than the Acme Meat Company?

A. No, I would do the work for the Acme Meat Company at the week end. [193]

Q. That was the only time you worked for the Acme Meat Company, was it?

A. Sometimes it is possible that I would take some bills of the Acme Meat Company home, and figure them in the evening, after my day's work at the Coast Packing Company; but, as a rule, most of the work was done on Saturday and Sunday.

Q. Where was it done? A. At my home.

Q. In order to do that you had to have the books and data there, didn't you? A. Yes.

Q. You got them, I assume from the Acme Meat Company's office? A. Yes.

Q. What would you get, to take home?

A. The invoices, the sales invoices; the ledger I kept at home; the accounts receivable ledger, and I would get the check book and bring that up to date, and the check record.

Q. The ledger you kept home all the time, did you? A. Yes.

Q. Where did you keep the invoices after they had been entered?

A. I would collect the invoices until I got a sufficient number together to make a package, and then turned that [194] over to Mr. Ormont, taking them to his plant, at intervals perhaps six months.

(Testimony of Ernest Link.)

Q. During the accumulation of those invoices, which was about a six months' period, you would keep them at home, would you? A. Yes.

Q. Would you pick up invoices every week end?

A. I would either pick them up, or Mr. Ormont's partner, or himself, would bring them on his way home to my house.

Q. Frequently they were brought over then?

A. Yes.

Q. On occasions, when they were brought to you, you did not go to the office of the Acme Meat Company during the week or week end?

A. That is correct.

Q. Did you keep any of the other records at your home, for any period like six months, or anything of that sort, other than the ledger and the invoices?

A. My accounting forms, on which I figured profit and loss calculations every month, I would keep at home.

Q. The only time then that you worked on these books of the Acme Meat Company was Saturday and Sunday, and possibly once in awhile in the evening? A. Yes.

Q. And all that work was done in your home?

A. Yes. Pardon me. May I make one correction?

Q. Yes.

A. It was occasionally that I was waiting for some of the books to be finished, and I may have, once in awhile, put in a half hour's work on those bills in his office.

(Testimony of Ernest Link.)

Q. Aside from those periods you have mentioned, and the times when you would go to pick up the records, those were the only times that you went to the office of the Acme Meat Company, is that right?

A. Not exactly. Since I worked in Vernon, sometimes I would drop in.

Q. You would drop into the office?

A. I would drop into the office, because I was so close to the office. I was next door.

Q. But, generally speaking, you were seldom in there, except when you went to get the books, is that correct? A. Yes.

Q. When you would go to get the books, where would you find them?

A. In the office of the Acme Meat Company.

Q. And where would you find the invoices?

A. In the office of the Acme Meat Company.

Q. When you got those invoices, did you get the invoices that were in the charge accounts? That is, that the cash had not accompanied them? [196]

A. I got the invoices for the charge accounts as well as the cash sales.

Q. You got both kind?

A. Yes, and the deposit slips.

Q. You got the deposit slips for the Acme Meat Company bank account? A. Yes.

Q. You say you would take the check book with you, and check the books of the Acme Meat Company so that you could enter your cash matters or transactions in the books or the ledger?

A. Yes.

(Testimony of Ernest Link.)

Q. You would retain those over the week end, would you? A. Yes.

Q. When would you return those to the Acme Meat Company's office?

A. As a rule, on Monday mornings, when I would go to work in Vernon.

Q. Were there times when you did not return them on Monday mornings?

A. Occasionally they have been returned over Sunday, perhaps to Mr. Ormont's home.

Q. Were there any times when you had those check books in your possession, and at your home, more than a week end?

A. I don't recall that. [197]

Q. Would you always be able to bring the books up to date over Saturday and Sunday?

A. To the best of my memory, yes.

Q. You don't think you ever had to work on them on Monday or Tuesday of any week?

A. On Monday and Tuesday he needed them badly, the check book especially, for his livestock purchases.

Q. I understand he did, but I asked you if you ever had them on Monday or Tuesday.

A. I don't remember that.

Q. You would not say that you did not, at times, would you? A. I don't really remember.

Q. During all of these years you, and you alone, were in full charge of Mr. Ormont—of the Acme Meat Company, I should say—the Acme Meat Company's books and records, were you not, and kept them?

(Testimony of Ernest Link.)

A. No, during those vacation periods, which one time was a period of six months, five months, someone else was in complete charge.

Q. What year was that that you were gone five or six months? A. 1939.

Q. Where were you? A. In Germany.

Q. Do you remember the months?

A. From April until November.

Q. And during that period, of course, you did not have the books, and did not keep them?

A. No.

Q. Do you know who did? Do you know the man?

Mr. Strong: I haven't objected before, but 1939 is three years before the dates of the indictment.

Mr. Robnett: I will withdraw the question.

Q. Did you take a vacation any other time, during the period from 1931 to 1945? A. Yes.

Q. What years did you take vacations?

A. My mother suffered a paralytic stroke in 1934, and I received a telegram from Europe to come quickly and see her, and I took an eight weeks' vacation to see her.

Q. That wasn't very much of a vacation, was it?

A. It was a fast trip, back and forth.

Q. Did you take any other vacations in any other years, as vacations are commonly used?

A. I took vacations, but they would not affect the Acme Meat Company, inasmuch as I could do that work still over the week end.

The Court: In other words, in 1939 you did all the books? [199] A. Yes.

(Testimony of Ernest Link.)

Q. When you did take a vacation, you kept up on it when you came back? A. Yes.

Q. After 1939, no one had anything to do with keeping the books, except you?

A. To the best of my knoweldge, yes.

Q. You would have known it, at the time, wouldn't you?

A. Those are such small details to me in my work.

Q. The Acme Meat Company—in going over their books, didn't you check them to see if there were entries made in there by somebody else, you did not know anything about?

A. Yes, I would see them. [200]

The Court: Well, they were made by you?

The Witness: Yes.

The Court: They were all made by you?

The Witness: Yes.

The Court: So your answer is that you kept the books after 1939?

The Witness: Yes.

Q. (By Mr. Robnett): Most of your work seems to have been for packers or meat companies, is that correct? A. Yes.

Q. Mr. Link, through your experience in that regard did you learn anything about the manner of grading cattle, or whether they were or were not graded? A. Yes.

Q. You did learn that? A. Yes.

Q. You learned that cattle were classified into different grades, or that the carcass was after the same was slaughtered? A. Yes.

(Testimony of Ernest Link.)

Mr. Strong: I object to that. I don't see what this has to do with the case. This relates to income.

The Court: Objection overruled.

The Witness: Yes. [201]

The Court: Were they rated before they were slaughtered as well as after?

The Witness: They were rated during the war after they were slaughtered.

The Court: Not before?

The Witness: Not before slaughter before the war.

The Court: No, before slaughter. In other words, an old cow wouldn't be graded the same as a nice young fat steer before it was slaughtered?

The Witness: Not to my knowledge, but I am not familiar with the livestock end of the business.

The Court: I see.

Q. (By Mr. Robnett): Do you know what grades the Government used as to beef, that is, what they classify them as?

The Court: You mean killed beef?

Mr. Robnett: Yes, the carcass.

The Witness: AA, A, B, C.

Q. (By Mr. Robnett): You stated——

The Court: Had you finished?

The Witness: Cutters and canners.

Q. (By Mr. Robnett): You started with the higher grade, I take it, AA is the highest grade?

A. That is right.

Q. When we speak of the grading, that was a United States Medal A grading? A. Yes.

(Testimony of Ernest Link.)

Q. During your experience at the Acme Meat Company, the beef and the carcasses were graded to your knowledge, were they not, by the Government? A. Yes.

Q. And isn't it a fact to your own knowledge that Mr. Ormont, doing business as the Acme Meat Company, was doing business under a license from the United States Government as a packer or slaughterer?

A. Yes, as a customs slaughterer.

Q. I beg your pardon?

A. As a customs slaughterer.

Mr. Strong: Of course, your Honor, I think the license is the best evidence. As a matter of fact, I don't know whether the United States Government issues licenses to slaughterers or not. I have never seen one.

The Court: If it becomes material the license will be produced.

Q. (By Mr. Robnett): Mr. Link, during all those years that you were the bookkeeper for the Acme Meat Company, both while Mr. Ormont and Mr. Salter were co-partners, and likewise after Mr. Salter [203] retired and Mr. Ormont then conducted the business under that fictitious name, you made out the income report for Mr. Ormont, did you?

Mr. Strong: Objected to on the ground that income report may mean a dozen different things. If it is income tax returns, that is one thing; if it is information for some government agency, it is something else.

(Testimony of Ernest Link.)

The Court: Do you object on the ground it is indefinite and uncertain?

Mr. Strong: Yes.

Mr. Robnett: I will reframe the question.

Q. I mean the income tax reports that were made out, you made them out for each year, did you not? A. Yes.

Q. And in doing so you made them out from the books which you had kept, didn't you?

A. Yes, plus information which I received from the partners.

Q. Now yesterday I believe you identified on the income report that you made out for Mr. Ormont for 1944 a figure of \$1375 interest on bonds, that that was information that was voluntarily given you by Mr. Ormont, you said, for that year?

A. Yes.

Q. I also ask you now—let me have those (the documents [204] referred to were passed to counsel)—to examine Government's Exhibit No. 1, which is an individual income tax return for 1942, for the calendar year, for Sam Ormont—it is a photostatic copy, I should say—and I wish *you see whether or not there is any entry there of interest, whether it is on bonds or otherwise, but under that line that is given there.*

A. Yes, there is an interest on bank deposits and notes in the amount of \$1299.75.

Q. And you entered that on there, didn't you, that is, on the original?

A. (Pause)

(Testimony of Ernest Link.)

Q. When you made out that report you entered that on it, didn't you?

A. I may perhaps, before giving the answer, say that I gave the originals which I made out to Mr. Ormont who would then send them in. I did not send them in to the Government.

Q. I am not asking you that——

The Court: That isn't the question. The question is whether you entered that figure on that document, or the document of which that is a photostat.

The Witness: From this photostat it will be difficult for me to exactly state whether that is written by my typewriter.

The Court: If that is a true and correct copy of the return, then wouldn't you say that it was written by you? [205]

The Witness: Yes.

Q. (By Mr. Robnett): Where did you get the information for that item?

A. From the records available and from Mr. Ormont's information.

Q. Did you have in the Acme Meat Company records anything concerning that item?

A. There was in the Acme Meat Company records an income from interest which was charged to the business of the partnership, because Mr. Ormont advanced money to the partnership and drew interest on this advanced money.

Q. Is it your answer then that that could embrace some of that? A. It could.

Q. From those books, I mean?

A. Yes, it could.

(Testimony of Ernest Link.)

Q. Didn't Mr. Ormont tell you that same year of the item of interest that he has in there, or that you have placed in there, didn't he tell you that he had received that interest from sources?

A. As best I remember, he told me that he received some interest from a loan which he had made to an outsider, I believe on a citrus ranch.

Q. Now, by the way, when you testified as to being the sole bookkeeper and the one who kept all the records, you are [206] speaking only of the records of the Acme Meat Company as such, aren't you?

A. Yes.

Q. You did not keep any private books for Mr. Ormont in any other line of business, did you?

A. No.

Q. You just kept the Acme Meat Company records?

A. That is right.

Q. And when you checked check books that you have spoken of, they were the Acme Meat Company check books, weren't they?

A. Yes.

Q. And you did not use or have available for use, and didn't post, any items from Mr. Ormont's own bank accounts, if he had any?

Mr. Strong: Objected to on the ground there is no evidence that there were any other books.

The Court: Objection overruled. He said, if he had any.

The Witness: No.

Q. (By Mr. Robnett): Now will you look also—I believe I handed you an other exhibit—I show you Government's Exhibit 2, which is Sam Or-

(Testimony of Ernest Link.)

mont's individual income and Victory tax return for 1943, a photostatic certified copy, and I will ask you to [207] examine that and see whether or not there is any item there of interest on anything.

A. Yes, there is.

Q. In what amount? A. \$387.50.

Q. Is it not a fact that Mr. Ormont gave you that information that he had received that interest and for you to account for it on his income?

A. Yes.

Q. Now with each and every return, income tax return that you made for Mr. Ormont, as an experienced accountant and bookkeeper, I want you to tell the jury whether or not those returns, in your opinion, were correctly made out.

A. As a bookkeeper, yes. I am not an accountant.

Q. You are not an accountant? A. No.

Q. It is true, is it not, that Mr. Ormont left it to you entirely as to the manner in which you kept the books? A. Yes.

Q. Now you have testified——

The Court: Pardon me, before you get off of that subject. Each of those income tax returns that are in evidence here, you made out, I understand that to be your testimony?

The Witness: Yes.

The Court: I understand it also to be your testimony [208] that you made them out accurately?

The Witness: Yes.

The Court: That you reported all of the income, that you knew that Mr. Ormont had, and reflected by the books, and made only the deductions that were true and correct, according to your information?

The Witness: Not for the year 1944.

The Court: Not for the year 1944?

The Witness: This is 1942 and '43.

The Court: You have 1944 there, or who has it?

Mr. Robnett: That is Exhibit No. 3, Your Honor.

(The document referred to was passed to the witness.)

The Court: Now my question is, you made that out?

The Witness: I made this return out; yes.

The Court: And you made it out truly and correctly, according to the records in the books?

The Witness: Yes.

The Court: And the information Mr. Ormont gave you?

The Witness: Yes.

The Court: Did you know at that time, or did you have any reason to believe that you were making a false return?

The Witness: Yes.

The Court: You knew it was a false return?

The Witness: Yes.

The Court: When you made it out? [209]

The Witness: Yes.

Q. (By Mr. Robnett): Mr. Link, have you in this case or any matter connected with Mr. Ormont acted as an informer to the Government?

(Testimony of Ernest Link.)

Mr. Strong: I object. I think it would be clearer to the jury and everybody if he stated what he did rather than characterize it.

The Court: Counsel has a right to cross examine him. It goes to the credibility and bias and prejudice of the witness. Objection overruled.

The Witness: Mr. Ormont's records were examined——

The Court: No. Just a moment. You can answer that question yes or no.

The Witness: Yes.

Q. (By Mr. Robnett): And as such have you been promised any compensation? A. No.

Q. Have you been promised any immunity from prosecution for making out a false and fraudulent return that you have just testified you did?

A. No.

The Court: Mr. Link, are you aware of the statutory provisions for what is called moiety?

The Witness: No.

The Court: Do you know what moiety is? [210]

The Witness: No.

The Court: Are you aware of the statutory provisions which enables the Government to pay to an informer a certain percentage of the tax return when and if it is recovered?

The Witness: No. It is the first time I hear of it.

Mr. Strong: Me too.

Q. (By Mr. Robnett): Mr. Link, you testified yesterday that certain changes, entries in the books

(Testimony of Ernest Link.)

were changed, some of the records of the Acme Meat Company, by you I believe, was that correct?

A. Yes.

The Court: By the way, I understand your answer about you knew that it was a false return, that that applied only to 1944?

The Witness: Yes.

The Court: It did not apply to 1942 and 1943?

The Witness: That is right.

The Court: And I understand from your testimony that it was false to the extent of \$3000?

The Witness: Yes.

The Court: And \$3000 only?

The Witness: Yes.

Q. (By Mr. Robnett): And that is the \$3000 that you mentioned yesterday, is it, in your testimony as to the changed entries on the [211] books of the Acme Meat Company?

A. It is about that amount.

The Court: About it?

The Witness: Yes.

The Court: That was a recorded increase in the amount of money paid for the purchase of cattle?

The Witness: That is right.

The Court: Which you made as an additional deduction?

The Witness: Yes.

Q. (By Mr. Robnett): When you were working for the Acme Meat Company were you acquainted with Roy Mills, and/or Roy Mills & Son?

The Court: Is that a firm name?

(Testimony of Ernest Link.)

Mr. Robnett: Yes, I believe it is a firm name, your Honor.

The Witness: Only through the books. I don't know the man personally.

Q. (By Mr. Robnett): But you did have some items on the books in connection with Roy Mills & Son or Roy Mills himself, did you? A. Yes.

Q. And when you yesterday referred to certain changed items where you said that on Mr. Ormont's behest you increased the cost of certain beef on the books and on maybe some invoices—[212]

A. Not on th invoices.

Q. But on some books?

A. On the records.

Q. What particular record was that?

A. The subsidy program record.

Q. You did not increase it in the books of account themselves? A. Mr. Ormont did.

Q. He did that?

A. He made a check out for it.

The Court: He made what?

The Witness: He made the check out for that increased amount.

The Court: He actually paid the additional money?

The Witness: He paid the additional money with a check which was drawn.

The Court: He paid the additional \$3000?

The Witness: Yes.

The Court: So that the books were accurate when it said that he spent \$3000 more?

(Testimony of Ernest Link.)

The Witness: This change I cannot recollect exactly, whether it was made late in '44 or the beginning of 1945, but it was a check drawn to pay a personal check which Mr. Ormont had drawn out of his personal account, he told me.

The Court: That check went through and was paid? [213]

The Witness: I do not always check the endorsements.

The Court: Well, somebody got it. I mean to say, you check each month to see if the checks are cashed?

The Witness: If they are not cashed they are carried forward on an outstanding check list.

The Court: That is a rather large sum. Do you think that it would go through?

The Witness: For a firm that does a great deal of business, you always have a certain number of checks which are not returned.

The Court: Let me see if I understand your testimony. Do you want me to understand your testimony is that you don't know whether that check was ever cashed?

The Witness: That is right.

The Court: Do you mean you did check your books to see if it was cashed?

The Witness: I had no interest to check whether it was cashed or not.

The Court: But it was your duty to keep the books?

The Witness: Yes.

(Testimony of Ernest Link.)

The Court: To see that they were in balance?

The Witness: They will be in balance either way.

Th Court: Would your books be in balance if there is an outstanding check?

The Witness.: It would be taken up by the reconciliation [214] of the bank statement, and listed as an outstanding check if it hasn't cleared. [215]

Q. Up to the time you left that was still outstanding, or you don't know?

A. That I don't remember.

The Court: We will take a short recess. Remember the admonition, ladies and gentlemen.

(Short recess.)

The Court: Is there the usual stipulation?

Mr. Strong: So stipulated, your Honor.

Mr. Katz: So stipulated.

Q. (By Mr. Robnett): Mr. Link, the items that you have referred to as \$3,000 items, which you say Mr. Ormont placed some of the figures on the books, and that you changed certain documents in connection therewith, isn't it true that those items were with respect to cattle that had been purchased from Roy Mills & Son? A. Yes.

Q. And they were all respecting those items?

A. Yes.

Q. At the time Mr. Ormont asked you to make those changes, didn't he tell you that when he bought those cattle from Mr. Mills, or Mills & Son, that he had bought them under the understanding that he would pay a given price at that time, and if

(Testimony of Ernest Link.)

and when the cattle were slaughtered the Government had graded them at a higher grade, that he would increase the [216] price to Mr. Mills? Didn't he tell you that? A. No.

Q. Didn't he mention anything of that sort to you? A. No.

Q. Not a word? Not a word of that?

A. No.

Mr. Robnett: I would like to have these three items marked for identification. I think they had better be separated, according to their dates.

The Clerk: B, C and D. Exhibit B, dated September 30, 1944; Exhibit C dated October 31, 1944; Exhibit D, dated November 30, 1944.

(The documents referred to were marked Defendants' Exhibits B, C and D for identification.)

Q. (By Mr. Robnett): I will ask you if, at the time he asked you to make those corrections, if he didn't also tell you that he, out of his personal checking account, had issued checks to Roy Mills & Son for the differential, or the increased amount that these cattle graded, and that he wanted you to enter on the books the total amount of those items, and he would take a check back to himself from the Acme Meat Company for the aggregate of those checks?

A. He told me that he would do that.

Mr. Robnett: I will ask the clerk to kindly mark this [217] Defendants' Exhibit next in order for identification.

(Testimony of Ernest Link.)

The Clerk: Exhibit E, check dated September 29, 1944.

(The document referred to was marked Defendants' Exhibit E for identification.)

Q. (By Mr. Robnett): Mr. Link, I am going to first show you Defendants' Exhibit B for identification, and ask you to examine that. I now show you Exhibit C for identification, and ask you to examine that; and I will show you Exhibit D for identification, and ask you to examine that. I will show you Exhibit E for identification, and ask you to examine that. I am going to hand you a piece of blank paper and a pencil, and ask you to kindly take the amount of Exhibits B, C and D off of those items, and add them.

Mr. Strong: I object upon the ground that no foundation has been laid for these checks. They are not in evidence. We don't know anything about them.

The Court: Haven't you seen them?

Mr. Strong: I have seen them. I don't know where they came from.

The Court: Objection overruled.

Mr. Strong: No proper foundation has been laid, your Honor. He is taking figures and making testimony out of them.

The Court: Objection overruled.

Mr. Robnett: You may retain the papers: I would like my [218] pencil. Thank you.

(Testimony of Ernest Link.)

Q. Now, I will ask you, Mr. Link, if at the time Mr. Ormont asked you to make the changes that you have testified you did make in some documents of the Acme Meat Company, if he didn't show you Defendants' Exhibits B, C and D for identification, which I have just had you examine?

A. No, he did not. [219]

Q. Did he tell you that he had issued similar items to those checks that I have just called your attention to?

A. He told me that he would issue them.

Q. You are sure he used the word "would", are you?

A. Yes.

The Court: Your first conversation with him was in October, is that right? I understood your testimony yesterday concerning these matters that it was in October.

The Witness: Yes, sir.

The Court: So you had more than one conversation with him about these?

The Witness: Yes.

Q. (By Mr. Robnett): Well, at any conversation did he not tell you that he had issued checks to cover the amounts he was asking you to increase the cost of the cattle from Roy Mills & Son?

A. Only in December did he tell me that he would issue those.

Q. That was in December of '44?

A. To my best knowledge; yes.

Q. Isn't it a fact that the only time that he talked to you about making those changes was in December 1944?

A. Yes.

(Testimony of Ernest Link.)

Q. That was after all of the items of increase had been taken care of by him, was it not? [220]

A. I don't understand what you mean by had been taken care of.

Q. I mean that all of the checks that I have shown you were all dated before that, weren't they?

Mr. Strong: I will object to that. The witness testified in the future, not in the past.

The Court: Objection overruled. He said the checks I have shown you were all dated before that.

Mr. Robnett: You may look at the checks again.

(The documents referred to were passed to the witness.)

The Witness: He told me in December that he would write these checks and pre-date them.

Q. (By Mr. Robnett): He told you he would write them and pre-date them, did he?

A. Yes.

Q. And he told you also, did he not, that at that time he was going to take a check from the Acme Meat Company account, made payable to him, for the aggregate of these three checks, Exhibits B, C and D for identification? A. Yes.

Q. Now was that not on or about the 20th day of December 1944?

A. It was some time in December. I don't know when.

Q. I show you Exhibit E for identification and ask you [221] if that refreshes your memory as to when it was.

(Testimony of Ernest Link.)

A. (Examining document) Well, the check carries the date of the 20th of December.

Q. 1944? A. Yes.

The Court: Does that refresh your recollection about the date?

The Witness: Only as far as December is concerned, but not the date.

Q. (By Mr. Robnett): That Exhibit E—please look at Exhibit E—I will ask you if that is not for the identical amount that you have just calculated was the total of Exhibits B, C and D.

Mr. Strong: Objected to on the ground there is no proper foundation laid, and he is getting the substance of the checks in evidence without having properly shown what they are.

The Court: The objection is overruled.

The Witness: It is the identical amount.

Mr. Robnett: I now at this time, if the court please, offer in evidence Defendant's Exhibits B, C and D.

Mr. Strong: Objected to on the ground there is no proper foundation laid.

The Court: Let me see them.

(The documents referred to were passed to the court.) [222]

Mr. Robnett: And I also offer E.

The Court: Did you ever see these checks before?

The Witness: No.

The Court: Do they bear any indication on them that you have checked them against the bank book?

The Witness: No.

(Testimony of Ernest Link.)

The Court: You know you have never seen them?

The Witness: That is right.

The Court: Did you in 1945 audit his bank statement?

The Witness: Those are personal checks. I never had anything to do with them.

The Court: Did you ever see Exhibit E?

The Witness: It is possible that in making my bank reconciliation for the month of December, 1944, it is probable that I saw this check.

The Court: Would you recognize the signature on those as the signature of Sam Ormont?

The Witness (Examining documents): Yes.

The Court: The objection is overruled. The documents are admitted in evidence.

(The documents referred to were received in evidence and marked Defendant's Exhibits B, C, D & E.)

Mr. Robnett: Your Honor, I don't know what your rule is about when they may show these to the jury, and I don't want to violate any rule. [223]

The Court: Whenever they are in evidence you may offer them and show them at that time. Either side may do so. However, it is a matter that I exercise with discretion according to the document. If the document is a long one and will take too long to read, you had better send it up at another time.

Mr. Robnett: I want to ask one or two questions and then I would like at that time to pass them to the jury, if it is agreeable to your Honor, and there is just one or two more questions.

(Testimony of Ernest Link.)

The Court: I think probably they could all go up together at the conclusion of the trial.

Mr. Robnett: Very well then.

The Court: What is the amount of the check, E?

The Clerk: \$3,682.

Q. (By Mr. Robnett): And that is the amount you calculated on this paper, isn't it? A. Yes.

Mr. Robnett: I offer this in evidence as our next exhibit, the calculation made by the witness of the checks.

The Court: Exhibit F. Admitted.

(The document referred to was received in evidence and marked Defendant's Exhibit F.)

Q. (By Mr. Robnett): Mr. Link, referring now to Exhibit [224] B for the defendant which is in evidence, being a check for \$1,932, payable to Roy Mills & Son, and showing the stamp on the back, the stamp of the bank, and stamped Paid through it by perforation, I will ask you if that amount of that check is not exactly the amount of one of the changes that you were requested to make and did make on the cost of the cattle from Roy Mills & Son.

A. Yes, I believe it is.

Q. I will ask you to examine Exhibit C for the defendant, which is a check for \$1300, made payable to Roy Mills & Son, and stamped Paid as the other check was and with bank stamps on the back, and ask you if that is not the exact amount of one of the items that you were asked to change as to the cost of cattle from Roy Mills & Son.

A. Yes, sir.

(Testimony of Ernest Link.)

Mr. Strong: Objected to on the ground that the books are the best evidence.

The Court: Objection overruled.

Q. (By Mr. Robnett): I will ask you, as to Exhibit D, which is a check for \$450——

The Court: This is cross-examination, and you have touched upon the changes he made in your direct examination.

Mr. Strong: Not as to the check, your Honor.

The Court: As to the amounts. That opened the door. [225]

Q. (By Mr. Robnett): It is a check dated November 30, 1944, for \$450, to Roy Mills & Son, signed by Sam Ormont, and has the stamp Paid by the bank on the back thereof and perforated through it. I will ask you if that is not the exact amount of one of the changes that you were asked to make as to the increase in cost of cattle purchased from Roy Mills & Son by the Acme Meat Company.

A. (Pause)

Q. Do you understand the question?

A. Yes. I was only looking for the endorsement.

Q. I am asking you only as to the amount.

A. Yes.

Q. Now do I understand you to say, Mr. Link, that Mr. Ormont never at any time told you that the reason for the increased cost of those cattle was because of the grading of the beef by the government after they were slaughtered into a higher

(Testimony of Ernest Link.)

grade than the price that he had paid for them on the hoof? Did he ever tell you that?

A. There was a discussion about it, but not in those words.

The Court: What was the discussion?

The Witness: He discussed with me the ways of making out checks to pay for added costs to the purchases which had been entered in the books from previous bills concerning the purchases of Roy Mills. [226]

Q. He did tell you, did he not, that the increase was because of the higher grade of these cattle after they were butchered—higher grades by the U. S. Government? Didn't he tell you that?

A. No.

Q. Never?

A. No, not in those words.

The Court: Did he tell you that in substance? Did he convey that idea to you in some other words?

The Witness: Yes.

Mr. Robnett: I am going to have this document marked next exhibit, please.

The Clerk: G for identification.

(The document referred to was marked as Defendants' Exhibit G for identification.)

Q. (By Mr. Robnett): I now show you Defendants' Exhibit G for identification, Mr. Link, and ask you to examine that, and tell me whether or not that was prepared by you?

A. That was made by myself.

(Testimony of Ernest Link.)

Q. And the handwriting thereon is your handwriting, is it? A. Yes.

Q. And all that, that is, both in lead pencil, and that that is in red, was written by you, was it? [227]

A. Yes.

The Court: Except the letter G? That was written by the clerk? A. Yes.

Mr. Robnett: Yes. Pardon me.

A. That's right. I am sorry.

Q. I will ask you to look at that instrument. I would like to offer it in evidence first, if the Court please.

The Court: Let me see it.

Mr. Strong: I don't know what it purports to show. It may be immaterial and irrelevant.

Mr. Robnett: I don't think it is.

Mr. Strong: That's an opinion.

The Court: That was made in connection with the business of the Acme Meat Company?

A. Yes.

The Court: It is admitted.

(The document referred to was marked Defendants' Exhibit G and was received in evidence.)

Mr. Strong: May we have the record show when it was made, at least, your Honor?

The Court: Yes. When did you make it? Do you remember?

The Witness: In the months of October, November and December, 1944.

(Testimony of Ernest Link.)

Q. (By Mr. Robnett): Look at it, and maybe you can tell better. [228]

The Court: Which month?

The Witness: November, 1944.

The Court: You made it in November or December?

The Witness: Possibly in December. Probably in December, because this concerns the activities of November, which would be calculated at the end of November and the beginning of December.

The Court: All right.

Q. (By Mr. Robnett): I will ask you to look at this particular item under Recapitulation, an item of 450, with a red circle around it, and opposite which are the words: To be added to Roy Mills bills for graded purchases as per orders of Sam Ormont, 12-9-44. You wrote that, didn't you?

A. Yes.

Q. You got that information about the grading from Mr. Ormont, and that was the reason for that to be so added, did you not?

A. Not with regard to the grading.

Q. Where did you get the information that you put down there: To be added to Roy Mills bills for graded purchases?

A. Those are words that Mr. Ormont told me that that was to be added to these bills.

Q. And didn't he tell you further at that time that the reason they were to be so added was because that had been his [229] understanding with Roy Mills & Son when he was purchasing the cattle?

A. No.

(Testimony of Ernest Link.)

Q. He didn't tell you that? A. No.

Q. And that item of four hundred and fifty dollars, I will ask you if that isn't the identical item covered by Defendants' Exhibit D, the check of November 30, 1944, to Roy Mills & Son for \$450? I will ask you if that is not the identical item I have just asked you about on this Exhibit G?

A. Yes.

Q. It is? A. It is.

Mr. Robnett: I would like to have this marked for identification.

The Clerk: H.

(The document referred to was marked Defendants' Exhibit H for identification.)

Q. (By Mr. Robnett): Now, passing to this next exhibit, Mr. Link, I will show you Exhibit E, which you have said was the aggregate of the Exhibits B, C and D, that is, Mr. Ormont's personal checks. A. Yes.

Q. This is the Acme Meat Company's check for \$3682? A. Yes. [230]

Q. Dated December 12, 1944? A. Yes.

Q. I will ask you now if that is not the amount that you had in mind when you said that the books were changed, and that the amount was somewhere around \$3000? I will ask you if the amount was not exactly \$3682? A. Yes.

Q. As represented by this transaction?

A. Yes.

The Court: No other changes in the books?

(Testimony of Ernest Link.)

The Witness: No other changes.

The Court: For the year 1944, in the books?

The Witness: That's right. I will have to change my answer to that.

The Court: Yes.

The Witness: There had been the invoices made by Mr. Ormont to take the place of invoices which he had there to cover these last purchases.

The Court: To cover these particular purchases?

The Witness: To cover these particular purchases.

The Court: In other words, there were no changes relating to any other matters, though?

The Witness: No.

Q. (By Mr. Robnett): Mr. Link, isn't it a fact that there were other [231] changes, and those changes, instead of being increases were decreases in the cost of cattle, and that you made one on Exhibit G, whereby you put it down as a credit for bruised beef, \$45.49? I will ask you to examine that in red.

A. Yes.

Q. That change was also made on the books by you, and that was a decrease?

A. That was part of the whole transaction of changes.

Q. You did not mention it before, that there was a decrease ever? They were all increases? This one had escaped you, had it?

A. No, it had not escaped me, but I answered your question, I believe.

(Testimony of Ernest Link.)

Q. In any event, that one I have just shown you was not the only one that were decreases in the cost of cattle, was it, and that those changes were made after they had found that the beef was bruised?

A. There were small decreases made.

Q. But there were some?

A. There were some decreases.

The Court: Changes that were found after the beef was what?

Mr. Robnett: Slaughtered, and they found it to be bruised.

The Court: What? [232]

Mr. Robnett: Bruised meat, your Honor. It is so written on here.

The Court: I understand.

Q. (By Mr. Robnett): The transactions you have just testified concerning with regard to all of these exhibits and the increase of the price of these cattle purchased by Roy Mills & Son, those were the items and transactions that you testified to a while ago? A. Yes.

Q. As making the 1944, as you say that it made the 1944, income tax return false, is that correct?

A. Yes.

Q. And those are the only items, aren't they?

A. In 1944, yes.

Q. The other 13 years that you worked for Mr. Ormont and made out his income tax returns, '31 through '43—that will be 12 years, we will say—every return that you made was correct and according to your belief, wasn't it?

A. To the best of my knowledge; yes.

(Testimony of Ernest Link.)

Q. I am now going to show you Exhibit H for identification and ask you to examine that and tell me whether or not you prepared that. I have shown this to you, counsel.

Mr. Strong: Yes, I have seen it.

The Witness (Examining document): Yes.

Q. (By Mr. Robnett): The portion that is in handwriting is in your handwriting? [234]

A. Yes, sir.

Q. And you prepared the typewritten portion?

A. Yes, sir.

Q. And that is dated, it says "Profit and Loss Statement for Above Location, April to December 31, 1944?"

A. Yes.

Q. And "Acme Meat Company, 3301 East Vernon Avenue, Los Angeles"?

A. Yes. And it has the addition of the period in handwriting for the period preceding that one in 1944 at the previous location.

Q. In other words, it covers the entire 12-month period of 1944, does it?

A. Yes.

Mr. Robnett: I will now offer it in evidence, if the Court please, after taking off a pencil mark that I had put on.

Q. You hadn't put that there?

A. No.

Mr. Strong: Before he does, may I ask the witness some questions about? I don't know whether it is relevant or material here.

(Testimony of Ernest Link.)

The Court: No. You can cross-examine him about it. He has laid sufficient foundation to admit it in evidence, and it is admitted as Defendant's Exhibit H. [235]

(The document referred to was received in evidence and marked as Defendant's Exhibit H.)

Q. (By Mr. Robnett): Now I will ask you, Mr. Link, to examine the upper portion of this document under sales and then right immediately below that you have "less purchases, net after deduction of subsidies and closing inventory," you have the figure \$321,913.71, is that correct? A. Yes.

Q. I ask you if it isn't a fact that that item includes the item you have just testified concerning with respect to these various checks, namely—if that does not include as a part of the purchases the sum of \$3682 as a part of the cost of cattle.

A. Yes.

Q. And that you took from the books of the Acme Meat Company to make the statement you have in your hand? A. Yes.

Q. Now, Mr. Link, when did you cease working for the Acme Meat Company?

A. In 1945; in April 1945.

Q. Do you remember the exact date?

A. Around the middle of the month.

Q. And prior to that time, isn't it a fact, to your knowledge, that Mr. Ormont, conducting the Acme Meat Company, [236] had employed a full-time bookkeeper? A. Yes.

(Testimony of Ernest Link.)

Q. That was Mr. Sam Berlin, was it not?

A. Yes.

Q. That was before you quit? A. Yes.

Q. Now isn't it true that during the early part of '45 you retained in your possession for some days and days, many days, the invoices and certain other books or records belonging to the Acme Meat Company which were necessary and useable in filling out applications for subsidies?

A. Some of them; yes.

Q. To make that clearer, isn't it a fact that the subsidies were made up from invoices, or what were they made up from? A. From invoices.

Q. From the invoices? A. Yes.

Q. How often were those applications for subsidies made? A. Once a month.

Q. Every month for the preceding month, weren't they? A. Yes.

Q. And they had to be made accurately from the invoice, didn't they? [237]

A. Yes.

Q. Isn't it a fact that Mr. Ormont either telephoned you or saw you and talked to you several times and asked you to return those invoices that you had in your possession in order that he might make up his application for subsidies?

A. I made those up myself.

Q. Did you make every one of them up?

A. As long as I worked for him; yes.

(Testimony of Ernest Link.)

Q. Isn't it a fact—I will ask you again—that he communicated with you and asked you on numerous occasions in 1945, until April at least, to please return his books and records and his invoices so that he might file his applications for subsidies? Answer that yes or no.

Mr. Strong: I don't know what this provides. I think it is irrelevant and immaterial.

The Court: The objection is overruled.

The Witness: No.

The Court: It goes to the bias and prejudice of the witness.

Q. (By Mr. Robnett): You say he never did?

A. No.

Q. I will ask you if, as a matter of fact, you weren't disgruntled at Mr. Ormont because he had hired this other bookkeeper, full-time bookkeeper, and you so told Mr. Ormont [238] that you were?

A. Yes.

Q. That was early after he had hired him and before you quit working?

A. That was at the time when I quit.

Q. That was at the time you then told him?

A. Yes.

Q. That you were disgruntled because he had hired another bookkeeper? A. Yes.

Q. Now at that particular time you had some of his books and records in your possession, didn't you? A. Yes.

(Testimony of Ernest Link.)

Q. And you had a lot of his invoices in your possession?

A. The invoices, sales invoices, were in the possession of the Defense Supplies Corporation.

The Court: Did you have any in your possession, any kind of invoices?

The Witness: As to sales invoices——

The Court: No, any kind of invoices.

The Witness: Yes.

Q. (By Mr. Robnett): And you had them in your possession for several days at a time, didn't you? [239]

A. Yes.

Q. And you kept them there? A. Yes.

Q. And then you told him you were quitting?

A. Yes.

Q. And you didn't return them to him until he had demanded them several times, didn't you?

A. Yes.

Q. That is correct, isn't it?

A. That is correct.

Q. And you knew that they were necessary for him to have in order for him to obtain subsidies, didn't you? A. No.

Q. You did not? A. No.

Q. Did you not know that it was necessary to use the invoices in order to make an application for subsidies?

A. Those applications, I had already made myself.

Q. Did you make them and send them in?

A. Pardon me?

(Testimony of Ernest Link.)

Q. Did you make them and send them in to the proper officials so that subsidies might be granted and paid?

A. For the month of—up to and including March, yes.

Q. But it was in April that you still had a lot of his invoices, wasn't it, and that he would need for the month [240] of April to make his application?

A. For subsidies, no.

Q. You didn't have any then? A. No.

Q. You had some in your possession, didn't you?

A. Not concerning subsidies.

Q. What kind of invoices did you have?

A. Sales invoices.

Q. Sales only?

A. Mostly, only the ledger.

Q. The ledger is an entirely separate document from the invoices, isn't it?

The Court: Counsel, I see it is 12:00 o'clock.

We will recess until 2:00 o'clock.

Remember the admonition.

(Thereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m., of the same date.)

Los Angeles, California, Tuesday, May 27, 1947

2 P.M.

The Court: The usual stipulation?

Mr. Strong: Yes, sir.

Mr. Katz: Yes.

Mr. Robnett: So stipulated.

ERNEST LINK

the witness on the stand at the time of adjournment, having been previously duly sworn, resumed the stand and testified as follows:

Cross-Examination

(Continued)

By Mr. Robnett:

Q. Mr. Link, I am going to show you Government's Exhibit 3, which is the Sam Ormont income tax return for 1944; that is, a photostatic copy of it. I wish you would look at page 3 thereof, and I also show you Defendants' Exhibit H, which was a profit and loss statement which was made out by you, as you testified this morning, including the entire year of 1944.

The Court: Has H been offered in evidence?

Mr. Robnett: I think it is in evidence.

The Clerk: It is in evidence.

Q. (By Mr. Robnett): And I call your attention particularly to the figures in pen and ink, where it says: Total profit, 1944, \$11,649.57, [245] and ask you if that same figure, identical figure, appears on said third page of the exhibit that you hold in your hand? A. Yes, it does.

(Testimony of Ernest Link.)

The Court: Let me have the question.

(Question read by the reporter.)

The Court: Which is Exhibit 3, and it appears in pen and ink on Exhibit H.

Mr. Robnett: Correct.

Q. And where it appears on the third page of Exhibit 3, it appears on line 22, doesn't it, which says: Net profit? A. Yes.

Q. Mr. Link, in the month of April, 1945, you went down to the stockyards and saw Mr. Ormont, did you not? A. Yes.

Q. Do you remember the date?

A. No, not exactly.

Q. Do you know about when it was in April?

A. It was after I left his services.

Q. After you left his service, and you had a conversation with him at that time?

A. Yes.

Q. Just the two of you present?

A. That's right.

Q. I will ask you if you did not ask him at that time, or tell him, rather, at that time, that you wanted to buy a [246] home in La Canada? Did you? A. No.

Q. Were you contemplating purchasing a home anywhere?

A. I have been looking for a home for the last four years; at that time, for four years.

Q. Did you finish your answer? A. Yes.

Q. Did you tell him at that time that you wanted to buy a home? A. No.

(Testimony of Ernest Link.)

Q. You didn't mention it? A. No.

Q. Did you tell him at that time, or ask him, to loan you \$10,000. A. No, sir.

Q. Did you ask him at that time to give you \$10,000? A. No, sir.

Q. Did you at any time ask him to loan you \$10,000? A. No, sir.

Q. Did you ask him at any time to give you \$10,000? A. No, sir.

Q. Isn't it a fact, that it was after that, that is, during the conversation, that you said to him that you wanted to buy a home, and that you needed \$10,000, and you wanted him to let you have it, and he asked you if you had any collateral [247] or security for it, and you said no, and he said that was a lot of money, and wanted to know if you would give him a note if he let you have it, and you said no? Did any such conversation take place?

A. No, sir.

Q. Didn't you then say to him. I have a notion to turn you in, or report you, or something of that sort? A. No, sir.

Q. It was not at that conversation that you made that statement? A. That is correct.

Mr. Strong: I object to that. There is no showing that the statement was made. He said that you made that statement then.

The Court: Objection overruled.

Q. (By Mr. Robnett): You testified yesterday, I believe, that you at one time did make such a statement? A. Yes.

(Testimony of Ernest Link.)

Q. When was that made?

A. When I called him on the telephone a day or two after I left his services. At that time, when I left his services he asked me to reconsider my leaving, and I did not answer directly, so I wanted to make it clear to him that I did not intend to return to his services, and I called him a day [248] or two later, and told him so.

Q. You told him that you intended to report him to some officials?

A. That I had in mind doing so, yes.

Q. You subsequently did report him to some official, did you?

A. He was already under investigation.

Mr. Robnett: I move to strike the answer.

The Court: It may be stricken.

Q. (By Mr. Robnett): I ask you to answer the question yes or no: Did you subsequently report him to any Government official? A. Yes.

Q. To whom?

A. To the Defense Supply Corporation. [249]

Q. Do you remember what particular individual you talked to?

A. I don't remember the name of the gentleman—I remember the face of the gentleman but not the name of him.

The Court: You what?

The Witness: I don't remember the name of the gentleman. I remember the face.

Q. (By Mr. Robnett): Have you seen him in this courtroom at any time? A. No.

(Testimony of Ernest Link.)

Q. Did you at any time report Mr. Ormont to any other Governmental department or agents?

A. Yes.

Q. When did you do so?

A. It was about the same time; one of those days close to the day that I reported him in the Defense Supplies Corporation. I don't know the exact date.

Q. To whom did you report him the second time?

A. To Mr. Birchard of the Federal Government, of the Internal Revenue Department.

Q. To whom did you talk there?

A. To Mr. Birchard.

Q. He is here in the courtroom, is he?

A. Yes.

Q. He is the gentleman sitting at Mr. Strong's right? [250]

A. Yes.

Q. Where did you report that to him?

A. To his office.

Q. You went to his office?

A. That is correct.

Q. Did you at that time take with you some of the records or books of the Acme Meat Company?

A. I don't remember that exactly.

Q. You did at one time show Mr. Birchard some of the books and records of the Acme Meat Company, didn't you?

A. Yes.

Q. And you had them in your possession at the time you showed them to him?

A. Yes.

Q. And that was after you had ceased employment with Mr. Ormont.

A. Yes.

(Testimony of Ernest Link.)

Q. You turned over to Mr. Birchard some of those records and books, did you not?

A. I gave them to Mr. Birchard; yes.

Q. You knew at the time that they were the property of the Acme Meat Company, or Sam Ormont, the owner of the Acme Meat Company, didn't you? A. Yes.

Q. And you knew that the only way you had come into [251] possession of them was because you had got them while you were an employee of his? A. Yes.

Mr. Robnett: I thank you very much, and that is all.

The Court: Redirect?

Mr. Strong: There is another defendant, your Honor.

The Court: Any cross-examination of this witness?

Mr. Katz: No cross-examination, your Honor.

The Court: Redirect?

Mr. Strong: Yes, your Honor.

I want to indicate at this time before I start that I intend to ask the Court's permission to apply this witness' entire testimony against the defendant Himmelfarb. I am doing that so that if there is any cross-examination it can be had at this time.

Redirect Examination

By Mr. Strong:

Q. Now, Mr. Link, going into the transactions concerning which you have testified here, as to

(Testimony of Ernest Link.)

which entries were made on the books and as to which these checks were shown to you, that is Defendants' Exhibits B, C, D and E, and this document, Defendants' Exhibit H, and some other documents——

The Court: G.

Q. (By Mr. Strong): ——G, H—will you relate exactly what transpired [252] on the occasion that you testified to, giving the full conversation and not just parts of it, between you and Mr. Ormont as to those changes of the entries, those entries which total some three-thousand-odd dollars?

Mr. Robnett: Object to that as having been asked and answered. He was asked about that by counsel yesterday to give the conversations.

The Court: And it is not redirect. It was covered in your original direct examination. The objection is sustained.

Mr. Strong: Your Honor, they asked some questions which didn't bring out the full transactions. I would like to rehabilitate and bring in the full conversation.

The Court: You asked for the full conversation. The witness gave it. Upon cross-examination, counsel, within his rights, asked him if he didn't say such-and-such, and the witness said yes. You are foreclosed on redirect. You asked him that question. Objection sustained.

Q. (By Mr. Strong): Now in connection with these payments, these changes, did you bring the subsidy feature to Mr. Ormont's attention or did he bring it to yours in the first instance?

(Testimony of Ernest Link.)

Mr. Robnett: I object to that as not redirect.

The Court: Did you what?

(The question referred to was read by the reporter as set forth above.) [253]

Mr. Robnett: I add to my objection also that it is too general and doesn't specify just what features of subsidy he is referring to.

The Court: Objection sustained.

Q. (By Mr. Strong): Mr. Link, you testified that Mr. Ormont made some changes in connection with the three sums or four sums which total some three thousand-odd dollars. Now did you speak to Mr. Ormont first about those sums or did he speak to you in the first instance?

A. I spoke to him first.

Mr. Robnett: I object on the ground it is not redirect.

The Court: Objection sustained.

Q. (By Mr. Strong): As to these checks which are in evidence as Defendants' Exhibits B, C and D, will you state what Mr. Ormont said to you about drawing those checks?

Mr. Robnett: Object to that on the ground it has been asked and answered several times.

Mr. Strong: It was first brought up on cross-examination.

Mr. Robnett: That is right, but it was asked and answered several times.

The Court: Objection overruled. It is new matter brought in on cross-examination. [254]

(Testimony of Ernest Link.)

Q. (By Mr. Strong): Give us the conversation with reference to those checks.

A. Mr. Ormont told me that he would issue personal checks in order to make up the difference between the actual amount of the purchases and those amounts which he had asked me to change in order to avoid the loss of some of the subsidy payments.

Q. When did he tell you that?

A. In December.

Q. When with reference to the date upon which the changes were made in the books as you testified?

A. I did not quite understand.

Q. I said when did he tell you this, with reference to the dates on which the changes were made in the books?

A. With reference to the changes for the month of September, October and November.

Q. When did he tell you this, in September, October or November?

A. In December.

Q. And did he tell you why he was drawing those checks in December?

Mr. Robnett: Object to that as leading and suggestive, asking for a conversation.

The Court: Objection sustained. [255]

Mr. Strong: I don't understand the objection. I am asking for a conversation.

The Court: Read the question and the objection.

(Record read by the reporter.)

The Court: Objection sustained.

(Testimony of Ernest Link.)

Q. (By Mr. Strong): What did he tell you about getting these checks at that time?

Mr. Robnett: That is objected to upon the ground that he has already answered on direct examination

The Witness: I have not finished my answer.

The Court: The witness says he has not finished his answer.

Mr. Strong: Finish it.

A. He told me that those were checks in payment of differences and changes which he had asked me to make, and which he made on the original bills in order to avoid the loss of the subsidy payments. That those were payments which he wanted to appear on the books as being made to offset the loss of subsidy payments.

Mr. Robnett: I move to strike the answer out upon the ground that it does not prove or disprove anything in this indictment.

Mr. Strong: It proves that the records are false.

The Court: Government counsel's statement to the jury [256] will be disregarded by the jury.

Mr. Strong: I was not talking to the jury.

The Court: You are speaking in the presence of the jury, counsel.

Mr. Strong: I am sorry.

The Court: And your objection?

Mr. Robnett: My objection is that it does not prove or disprove any issue, and goes to a matter, he says, on the subsidy.

(Testimony of Ernest Link.)

The Court: The objection is overruled. The motion to strike denied.

Q. (By Mr. Strong): As I understand it, you testified to three different changes that were made, one September, one October, and one November, is that right?

A. Yes, he told me over the telephone at one time how much to raise the amount.

Mr. Robnett: Just a minute. That is not responsive to any question, and I move to strike the answer as to what he told him.

The Court: Let me hear the question.

(Question read by the reporter.)

The Court: After the word "yes" it may be stricken.

Q. (By Mr. Strong): And did you see Mr. Ormont when he made the changes, [257] making the exact changes on the invoices?

Mr. Robnett: I object to that upon the ground that there is no such evidence, as I recall in the record, that Mr. Ormont made any changes on the invoices.

The Court: Objection sustained.

Q. (By Mr. Strong): Where did Mr. Ormont make the change?

Mr. Robnett: That has been asked and answered.

The Court: Objection sustained.

Mr. Strong: May I ask the reporter to read to me so that I may know how to ask the question?

The Court: There is a transcript of the testimony here. You have been furnished with a copy.

(Testimony of Ernest Link.)

Mr. Strong: May I look through it at this time?

The Court: Not at this time. You will have ample opportunity.

Mr. Strong: It was just furnished me.

The Court: We will proceed with the examination.

Mr. Strong: I have no further questions, your Honor.

The Court: Very well. Is there any further cross?

Mr. Robnett: No, your Honor.

The Court: Any other cross, Mr. Katz.

Mr. Katz. No.

Mr. Strong: May I reserve the right to call the witness later? [258]

The Court: On redirect examination?

Mr. Strong: I have not had a chance to read the transcript. It just came to me.

The Court: You have been present in the court room all the time. The witness will step down. He may remain in attendance if you desire. Do you desire him to remain in attendance?

Mr. Strong: If you please, your Honor.

The Court: You may remain in attendance until excused by the Government counsel or myself.

(Witness temporarily excused.)

Mr. Strong: Mr. Eustice.

J. BRYANT EUSTICE

a witness called by and on behalf of the plaintiff,
having been first duly sworn, was examined and
testified as follows:

The Clerk: May I have your name?

The Witness: J. Bryant Eustice.

The Clerk: Your address, Mr. Eustice?

The Court: You are upstairs in the Internal
Revenue Bureau?

The Witness: Yes, your Honor.

Direct Examination

By Mr. Strong:

Q. Mr. Eustice, are you acquainted with the
defendants Sam Ormont and Phillip Himmelfarb?

A. Yes, I am.

Q. When did you first become acquainted with
them?

A. About November 8th, 1945.

Q. Was that in connection with the performance
of your official duties as an agent for the Bureau of
Internal Revenue? A. Yes, sir.

Q. And were you assigned to conduct an investi-
gation with reference to either of the defendants?

A. Yes, both Mr. Ormont and Mr. Himmelfarb.

Q. What were you investigating?

A. The 1942, 1943 and 1944 income tax returns
of both defendants.

Mr. Katz: I object to this, if the Court please,
and move to strike the answer, as 1942 and 1943 is
not in issue against the defendant Himmelfarb.

(Testimony of J. Bryant Eustice.)

The Court: They are not in issue, but I think the answer is proper. They investigate almost everybody's returns.

Q. (By Mr. Strong): Would you state briefly the steps that you went through making the investigation as to the income tax return for the defendant Sam Ormont, for the year 1942?

Mr. Robnett: I object to that as too general, incompetent, irrelevant and immaterial—the steps he went through generally.

Mr. Strong: I want to show how he investigated. I am not [260] going into particulars or details.

The Court: I don't see how that is the slightest bit material. Objection sustained.

Mr. Strong: Is that only as to year, or for any year I will ask?

The Court: How this witness investigated somebody is immaterial.

Q. (By Mr. Strong): Will you state what steps you took in investigating the income of the defendant Sam Ormont, for the years 1942, 1943 and 1944?

Mr. Robnett: Same objection.

The Court: Same ruling. What steps he took is immaterial.

Q. (By Mr. Strong): Will you state what sources of information you used in investigating the income tax and the income of the defendant Sam Ormont for the years 1942, 1943 and 1944?

Mr. Robnett: I object to that on the ground that it is asking for the opinion of the witness, and

(Testimony of J. Bryant Eustice.)

the conclusion of the witness, and is too general—what sources of information he used. It is seeking hearsay evidence. It could be. We don't know what it would be.

The Court: Sustained.

Mr. Strong: On which of those grounds?

The Court: All of them, and several others which he might have added. [261]

Q. (By Mr. Strong): I have placed before you various documents and records which are in evidence in this case. Will you please examine those documents and state whether you examined them in connection with your investigation into the income tax of either of the defendants for the year 1942, '43 or '44?

A. The first document is a——

The Court: Or the originals of which they are photostats.

The Witness: This is a photostatic copy of the original 1942 income tax return.

Q. (By Mr. Strong): Will you give the numbers of the documents as you answer?

A. No. 1, 1942 income tax return of Sam Ormont.

The Court: Have you examined that? Did you examine the original of which that is a photostat, or a photostat?

The Witness: I had the original in my possession.

The Court: The original return?

(Testimony of J. Bryant Eustice.)

The Witness: The original return in my possession, your Honor, when I started the investigation to examine the books and records of the Acme Meat Company and other sources of information.

No. 2 is the 1943, or a photostatic copy of the 1943, income tax return of Sam Ormont. I also had the original in [262] my possession at the time I made the examination.

No. 3 is a photostatic copy of the 1944 income tax return of Sam Ormont. I also had the original income tax return in my possession at the time I made the examination.

No. 4 is the 1944, or a photostatic copy of the 1944, income tax return of Phillip Himmelfarb. I also had the original of this return.

No. 5 is the photostatic copy of the 1944 income tax return of Ruth Himmelfarb. I had the original of this return.

Exhibit A is a photostatic copy of savings Account No. 747 of Sam Ormont—it doesn't say where it is; I know what bank it is, it is the Bank of America at Brooklyn and Soto Streets.

The Court: Did you examine the original of that?

The Witness: I examined the original and made a copy, a transcript, of the account and analysis of the bank deposits.

No. 37 are original bank deposits slips of Sam Ormont to this savings account, No. 747, which I identified as Exhibit A.

The Court: Did you examine those?

(Testimony of J. Bryant Eustice.)

The Witness: I examined these deposit slips, your Honor, and traced the source of certain items that are on the deposit slips. [263]

The Court: That is the source as indicated on the deposit slip?

The Witness: Well, the deposit slips indicate where the checks that were deposited, what bank they were drawn on, and I could determine, or did determine, from that information where the checks came from.

Exhibit No. 11 was the original ledger card on savings account of Sam Ormont, savings account No. 747 at the Bank of America, Brooklyn and Soto Streets.

No. 12 is a continuation of this original ledger card.

No. 15 is the original ledger card of Sam Ormont's commercial bank account at the Security-First National Bank, Huntington Park.

No. 16 is Sam Ormont's, or the original ledger card on Sam Ormont's savings account, No. 224808 at the Security-First National Bank, Huntington Park.

The Court: Did you examine them?

The Witness: Yes, your Honor.

The Court: You know what those exhibits are. The question is whether or not you have seen them before.

The Witness: Yes, your Honor, I have seen all of these that I have identified and made transcripts of all of them.

(Testimony of J. Bryant Eustice.)

No. 14 are the original deposit slips of Sam Ormont to his commercial account at the Security-First National Bank, Huntington Park. I examined these deposit slips and made [264] copies of them.

No. 23 are the original deposit slips of the Acme Meat Company to the Citizens National Bank. I examined these original deposit slips and made copies.

No. 22 is a signature card of the Acme Meat Company, payroll account, for Citizens National Bank.

No. 21 is a signature card of the Acme Meat Company, also at the Citizens National Bank.

No. 19 is a counter receipt signed by Sam Ormont for the withdrawal of \$5992.51 from the Security National Bank, Huntington Park branch.

The Court: You examined it?

The Witness: No. 20?

The Court: The previous one that you identified?

The Witness: Yes.

The Court: You have examined each one of these that you are identifying? You have examined the originals?

The Witness: I have examined them, your Honor.

No. 20 is a deposit slip to Sam Ormont's savings account, No. 224808, of the Security-First National Bank, Huntington Park, which I have previously examined.

Mr. Robnett: Will you speak a little louder, please?

The Witness: All right.

(Testimony of J. Bryant Eustice.)

No. 18 is a withdrawal slip or counter receipt drawn by Sam Ormont on the Security-First National Bank of Los Angeles [265] on its savings account No. 224808 for the amount of \$3750.

Does your Honor wish me to state each time that I have seen these?

The Court: Yes.

The Witness: Which I have previously examined.

The Court: If you haven't examined any of them, do not take the time to describe them because they have already been described and identified in the record.

The Witness: All right, sir.

No. 17 is a signature card of Sam Ormont for the term savings account No. 224808 of the Security-First National Bank, Huntington Park, which I have examined before.

No. 7 is the withdrawal slip by Sam Ormont from the savings account No. 747 of the Bank of America, Brooklyn and Soto, for \$12,500, which I have seen before. [266]

No. 8 is a withdrawal slip for \$2,500, signed by Sam Ormont, savings account No. 747, Bank of America, Brooklyn and Soto, which I have examined before.

No. 9 is a withdrawal slip, Bank of America, savings account No. 747, signed by Sam Ormont, for \$300. I don't recall definitely that I have seen that one, being a small amount.

(Testimony of J. Bryant Eustice.)

No. 10, signature card of Sam Ormont, for savings account No. 747, Bank of America, Brooklyn and Soto. I have seen this card before.

No. 13, signature card of Sam Ormont, for his commercial account, Security First National Bank, Huntington Park.

No. 24, original ledger cards of the Acme Meat Company at the Citizens National Bank. I haven't made an examination of all these ledger cards.

The Court: Of No. 24?

The Witness: Of No. 24, yes, your Honor.

The Court: All right.

The Witness: No. 25, signature card, Sam S. Ormont, at Merrill Lynch, Pierce——

The Court: Merrill Lynch, Pierce, Fenner & Beane?

The Witness: Fenner and Beane. Merrill Lynch, Fenner & Beane, that is not the name that is on the card. It is Merrill Lynch, E. A. Pierce and Cassett. They are operating at the present time as Merrill Lynch, Fenner & Beane. [267]

Mr. Robnett: We can't hear the statement of the witness.

The Court: He said that they are operating at the present time as Merrill Lynch, Pierce, Fenner & Beane.

The Witness: No. 26, a copy, original office copy of the ledger account of Sam S. Ormont. It is headed: Merrill Lynch, E. A. Pierce and Cassett.

No. 27 are copies, original office copies, of Sam

(Testimony of J. Bryant Eustice.)

S. Ormont account with Merrill Lynch, E. A. Pierce and Cassett. I will state that I have seen these copies before.

No. 28 are original office copies, Sam Ormont's account with Merrill Lynch, Pierce, Fenner & Beane.

No. 29, also original office copies, Sam S. Ormont's account with Merrill Lynch, Pierce, Fenner & Beane.

No. 30, also original office copy of Sam Ormont's account with Merrill Lynch, Pierce, Fenner & Beane.

No. 31, original office copies, Sam Ormont's account with Merrill Lynch, Pierce, Fenner & Beane.

No. 32, signature card of Phillip Himmelfarb, commercial account, at Bank of America. This is not one of the items that I identify—I mean, that I examined.

Mr. Strong: May we have that number in the record?

The Witness: No. 32, Phillip Himmelfarb.

Mr. Katz: May I have the record on that; that was or was not examined?

The Court: He said he did not examine it.

A. No. 32 was not examined by me.

No. 33 is a photostatic copy of a deposit slip in the name of Phillip Himmelfarb, Bank of America, which was not examined by me. [269]

No. 34, application for money order or cashier's check made payable to the Acme Meat Company, signed by Ruth Himmelfarb, for \$3150. This exhibit was not examined by me.

(Testimony of J. Bryant Eustice.)

Mr. Strong: What is the number?

The Court: No. 34.

The Witness: No. 35, a cashier's check drawn by the Bank of America, payable to the order of Acme Meat Company for \$3150. It looks like it was dated January 20, 1945. I don't recall having seen that.

No. 36 appears to be a certified copy of the original ledger card of Phillip Himmelfarb, Bank of America, First and Chicago Branch. I don't know without referring to my work papers whether I made a transcript of this account or not.

Mr. Strong: May he refer to his work papers?

The Court: Have you your work papers there?

The Witness: Yes, sir.

The Court: Is it necessary for you to refer to your work papers in order to refresh your recollection?

The Witness: On some of these.

The Court: If you refer to them counsel may have the opportunity of examining your work papers.

Mr. Strong: We have no objection.

Mr. Katz: Do you have those work papers with you?

The Witness: Yes, sir.

Mr. Katz: Which are the work papers which you intend to [270] refer to?

The Witness: (Indicating).

The Court: I think the witness might proceed with something else. Recess will be coming up

(Testimony of J. Bryant Eustice.)

pretty quick and I imagine it will take a little while to examine the work papers.

Mr. Katz: There are quite a few of them, your Honor.

The Court: Have you gone through the exhibits now, Mr. Eustice?

The Witness: There are two more, your Honor.

Exhibit 38 are office copies of sales invoices of the Acme Meat Company.

The Court: Office copies? Does it say office copies on there?

The Witness: Office copies.

The Court: That is what it says on them?

The Witness: It says office copies here. It is the original document.

The Court: All right.

The Witness: I have seen these invoices and examined them.

Exhibit 39 is a single invoice, No. 08346, of the Acme Meat Company, for sale of meat for \$270.60, which I have seen and examined before.

That is all the exhibits. [271]

The Court: Proceed, Mr. Strong.

Q. (By Mr. Strong): In addition to the exhibits that you have examined, did you in connection with your investigation into the income tax return of the defendant Sam Ormont for the years 1942, 1943 and 1944, and the defendant Phillip Himmelarb for the year 1944, examine any other books or records?

A. I examined the books and records of the Acme Meat Company.

(Testimony of J. Bryant Eustice.)

Mr. Katz: I object to that, if the Court please, and move to strike it, in so far as the defendant Himmelfarb is concerned, as there is no foundation laid for the testimony with respect to the examination of the books of the Acme Meat Company.

The Court: Motion denied. The question was limited to the year 1944, and he just said he examined the books with relation to the defendant Himmelfarb.

Q. (By Mr. Katz): You don't have those books now?

A. No, sir.

The Court: Where were they when you examined them?

The Witness: In the office of the Acme Meat Company.

The Court: You examined all the books and records they had there?

The Witness: For the years 1942, '43 and '44, and an [272] examination of any subsequent years that I considered necessary to the examination as far back as 1931.

The Court: Did you examine their records and check books, deposit slips?

The Witness: No, your Honor. I didn't consider that necessary in the examination, to examine the cancelled checks. I examined the cancelled checks for the year 1942, 1943 and 1944. I examined the personal withdrawals of Sam Ormont from 1931 to 1944 inclusive, that is, all withdrawals as recorded on the books and records of the capital

(Testimony of J. Bryant Eustice.)

account and to personal account of Sam Ormont, and also loans payable account as far back as there was any record on the books and records of the Acme Meat Company.

Q. (By Mr. Strong): What about as to Phillip Himmelfarb?

A. I examined the accounts showing his share of the profits for the year 1944, the amount of money that was paid to him.

Mr. Katz: I am going to interpose an objection, if the Court please, as a conclusion of the witness, and the records are hearsay as to this defendant.

The Court: Yes, that is a conclusion, as to his share of the profits, and the jury is instructed to disregard it.

Q. (By Mr. Strong): Did you make a transcript of the books and records [273] which you examined of the Acme Meat Company as you have testified? A. Of certain accounts.

Q. Do you have that here?

A. Yes, sir, I have.

Q. Is that part of your work papers?

A. Yes.

Q. Is that what you gave counsel to examine?

A. No, sir. That was regarding Phillip Himmelfarb only.

Q. Where are your work papers?

A. These are the work papers in connection with the examination of the books and records of the Acme Meat Company and other information.

(Testimony of J. Bryant Eustice.)

The Court: Will it be necessary for you to refer to those work papers in connection with your testimony here?

The Witness: Yes, your Honor.

The Court: All right.

Mr. Strong: May I show these to counsel?

The Court: Yes. I think this might be an appropriate time to recess because I presume the rest of your examination will be developed with that material.

Mr. Strong: Yes, your Honor.

The Court: We will have the afternoon recess. Remember the admonition.

(Short recess.) [274]

The Court: The usual stipulation?

Mr. Strong: So stipulated.

Mr. Katz: So stipulated.

Mr. Kosdon: Yes.

Mr. Strong: May I have this marked for identification, your Honor.

The Clerk: 40 and 41.

(The documents referred to were marked as Government's Exhibits 40 and 41 for identification.)

Q. (By Mr. Strong): Will you state what Government's Exhibit for identification is?

A. 40 are work papers made up during my examination of the income tax returns of Sam Ormont, and the examination of the books and records of the Acme Meat Company.

(Testimony of J. Bryant Eustice.)

Q. What about these other documents which you have testified about? A. 1941?

Q. No, the bank records and other documents.

The Court: They are not part of his work papers.

Q. (By Mr. Strong): Do your work papers reflect figures and data shown in these documents?

A. Yes, sir, they do.

The Court: What is 41? [275]

The Witness: 41, work papers I made in connection with the examination of Mr. Phillip Himmel-farb income tax return for the year 1944.

Q. (By Mr. Strong): Going back to 40, what years did that cover, of Sam Ormont?

A. There is information in the work papers and schedules.

Q. What I want to know is in connection with what income tax returns?

A. With the examination of his 1942, 1943 and 1944 income tax returns.

Q. In connection with those papers, did you prepare a summary of the work papers?

A. Yes, sir.

Q. Do you have that with you?

A. Do you mean of the adjustments I made as a result?

Q. Yes.

Mr. Strong: Your Honor, I have given a copy of this summary of adjustments to counsel for the defendants. May I hand one to the Court?

Mr. Katz: I did not get a copy of that.

(Testimony of J. Bryant Eustice.)

Mr. Strong: I will try to get an extra one. I hand you a complete set.

Mr. Katz: Thank you, Mr. Strong. [276]

Q. (By Mr. Strong): Taking them year by year, the defendant Sam Ormont, for the year 1942, will you give his income tax return for that year? I think it is before you. A. Yes.

Q. Did you make an examination of the books and records of the Acme Meat Company and various bank records which are before you in connection with the income tax return of defendant Sam Ormont for the year 1942? A. Yes, I did.

Q. And did you make any further investigation to determine the income of the defendant Sam Ormont for the year 1942?

A. Other than the books and records of the Acme Meat Company?

Q. Other than the income tax returns and from the books and records.

The Court: I don't think I understand your question. I don't know that the witness does.

Mr. Strong: My first question was whether or not you made an examination of the books and records and the various bank documents that are before you, to determine—rather, in connection with the income tax return itself, as it appears now?

A. Yes, I did. [277]

Q. Did you make any investigation to determine whether there was any additional income beyond that reported? A. Yes, that is correct.

(Testimony of J. Bryant Eustice.)

Q. The income for the year 1942—may I refer to the summary, your Honor, instead of the work papers, if there is no objection of counsel?

The Court: If it will aid the witness, if it is not otherwise objectionable, go ahead and ask him and we will see. That is the only way we can find out.

Q. (By Mr. Strong): Will you take the first, the income tax return for 1942, which is salary, and say what your examination of the books and records and other bank documents, and other documents before you disclosed as to the salary of the defendant Sam Ormont for the year 1942?

The Court: Let me hear the question.

(Question read by the reporter.)

Mr. Robnett: I object to the questions as calling for the conclusion of the witness. It would be immaterial. It is asking for his conclusion from things. We don't know what he examined.

The Court: Yes, that is right. Objection sustained. [278]

Q. (By Mr. Strong): Will you state what items you examined as reflected by your work papers in determining—

The Court: First of all, the salary reported is \$5200?

The Witness: Yes, your Honor.

The Court: Now in your examination, do you assert that there was an incorrect return of the amount of salary that he received?

(Testimony of J. Bryant Eustice.)

The Witness: Can I make a full explanation?

The Court: No. You can answer yes or no and we will get around to that. Do you assert that he received more salary than he reported?

The Witness: No, your Honor.

The Court: You do not?

The Witness: No.

Q. (By Mr. Strong): As to the second item, which is dividends, were there any dividends which were received by the defendant Sam Ormont for the year 1942? A. Yes.

Q. Were there any dividends reported by the defendant Sam Ormont for the year 1942?

A. No, there were not.

Q. Will you state what your investigation disclosed as to the dividends which were received by the defendant Sam Ormont [279] for the year 1942?

A. Well, the amount of dividends received were \$37.50.

Q. And that was not reported on the income tax return for the year 1942?

A. It is not reported on the income tax return.

The Court: Where did he get them from?

The Witness: They were credited to the taxpayer's account at Merrill Lynch, Pierce, Fenner & Beane.

The Court: They were credited to his account there?

The Witness: Yes, your Honor.

Q. (By Mr. Strong): The third item on the income tax return, interest, will you state whether

(Testimony of J. Bryant Eustice.)

you found any additional interest not reported on the return of Sam Ormont for the year 1942?

A. Yes, I did.

Q. How much was that?

The Court: I think that this witness can state what he asserts but the jury has to determine whether he found any.

Mr. Strong: I intend merely to have him state what he asserts is the amount. Of course it will be left to the jury whether it is accurate or not.

The Witness: Additional income of \$135.18.

The Court: How much did he report?

The Witness: \$1299.75 [280]

Q. (By Mr. Strong): And you assert that the correct amount is how much? A. \$1434.93.

Q. Now as to additional income not reported elsewhere appearing on item 9 on the income tax return, do you assert that there was any additional income over that reported?

A. Yes, there was.

Q. How much was that? A. \$3359.22.

Q. With reference to item 10, partnership——

The Court: How do you make that up? You didn't make it up out of thin air, did you?

The Witness: No, from the analysis of the taxpayer's bank accounts.

Mr. Robnett: I move to strike the answer out, if the Court please, on the ground that that is not proof of any income and that it is a conclusion of the witness.

(Testimony of J. Bryant Eustice.)

The Court: Yes. It is strictly a conclusion and it is not proof of any income.

Q. (By Mr. Strong): Will you state what items you found and upon what records you found them which make up the \$3359.22 which you say was additional income not reported?

A. That is, if I understand the question——

Q. You can use your work papers. [281]

A. That is what bank accounts they are?

Q. Yes, item by item.

A. Unidentified or unexplained cash deposits, \$760 to the Security-First National Bank, that is, to Sam Ormont's commercial account at the Security-First National Bank, Huntington Park, and \$500 in cash to the Bank of America savings account No. 747.

And unexplained checks deposited to the Security-First National Bank, Sam Ormont's commercial account, for \$186, to savings account No. 747, Bank of America, of \$725.72. That makes up a total of \$3359.22.

The Court: What are those figures again, 760, 500, 186 and 745?

The Witness: And 725.72.

The Court: And 725.22? What are they, from 760?

The Witness: 760——

The Court: 500, 168 and 745.22?

The Witness: 725.72.

The Court: 725.72 or 745.22?

The Witness: 725.72.

(Testimony of J. Bryant Eustice.)

The Court: And not 745.22.

The Witness: That is correct.

The Court: That makes up 3359?

The Witness: I might explain, I am taking this from my work papers, that is, the original work papers. Later on I [282] made——

The Court: That is only \$2171.

The Witness: Later on I made up my report from those.

The Court: And it is not \$3359?

The Witness: Can I refer to this?

The Court: Surely, you can refer to that. He is asking you how you made up your items, where you got them from.

The Witness: No, I have a further breakdown of that item in my report here. Those two items plus undisclosed funds used to purchase United States defense bonds of \$1187.50.

The Court: When you say they are undisclosed or unexplained, you mean that you didn't find any explanation of them in his books, of the Acme Meat Company, is that what you mean?

The Witness: Not exactly that, your Honor. The first step before I determined that any of these items were undisclosed was to account for all his sources of cash, or other funds that the taxpayer had access to for the year 1942, and these items are items that I could not trace to these known sources and which the taxpayer could not explain.

The Court: What were the known sources?

(Testimony of J. Bryant Eustice.)

The Witness: The drawings from the taxpayer's business. I have a complete summary, your Honor, of the funds of the taxpayer which he had available to him in 1942.

The Court: From what sources, his business?

The Witness: Yes, withdrawal from the Acme Meat Company, from which he drew \$12,506.09. Of this amount he deposited \$12,000 to his personal bank accounts. He received interest checks from Sam and Ben Borne for \$1290.75. He deposited \$990 to his personal bank accounts. He had interest on savings accounts which were credited to his bank accounts of \$135.18. He received repayment of a loan that he had made in previous years to Sam and Ben Borne of \$10,000. He received payment of a loan that he had previously made to Nolan Allen of \$200.

In addition to these items which could be traced, he received cash deposits of \$1260, and the checks for \$911.72, not only accounted for the money that he received and he had access to, but what disposition he made of those funds and received them, which are as follows—— [284]

The Court: Did you check to see whether or not apparently he had a savings bank account, in one of the banks, and were the deposits check from another bank, or shifted back and forth from one bank to another?

A. Yes, I traced all transfers from one bank to another, and can account for all of them.

Q. (By Mr. Strong): About bonds—did you find anything about bonds?

(Testimony of J. Bryant Eustice.)

A. I was about to show the disposition of these funds. The taxpayer withdrew from his personal bank accounts and deposited in the Acme Meat Company \$3,800. He purchased defense bonds by withdrawal from his personal bank accounts of \$7750. He made payments on life insurance premiums of \$1058.15. He paid on his 1940-1941 federal income tax \$1015.17. He had other personal expenditures, which he paid by check, of \$887.40.

It can be shown that his total expenditures for personal use, when you account for all those items that were available to him, were \$506.09, of the checks drawn from Acme, which he did not deposit to his bank account; \$309.75, he received on interest payments from Sam and Ben Borne, which he did not deposit to his bank account, and \$887.40, which was checks for personal use, on his business bank account—the total amount for personal expenditures which we took into consideration was \$703.24. All other items that he received in the [285] disposition of these funds has been accounted for. In addition to that he received \$1260 cash, \$911.72 in checks——

The Court: What \$1260?

The Witness: That's \$760 and \$500 items.

The Court: You mean it shows a deposit there of cash?

A. Yes. That is in addition to the bonds that we show that he bought, of \$7750, that he purchased from withdrawals from his bank accounts.

Q. (By Mr. Strong): I did not hear the last item. How much was that?

(Testimony of J. Bryant Eustice.)

A. I said in addition to the defense bonds which the taxpayer purchased from withdrawals from his bank accounts, he purchased other defense bonds from undisclosed funds, in the amount of \$1187.50.

Q. Did you examine the bonds themselves?

A. Before I went on——

Q. Say yes or no.

A. No, I did not examine them myself.

Q. Go ahead; continue.

The Court: How do you know he bought them then?

The Witness: There are other special agents who were on the job before I was, and they made a list of the bonds, took an inventory of them, and I am stating what was given to me.

The Court: According to the information you received from them? [286]

The Witness: From other agents. I have a complete list of them.

Mr. Strong: They will testify, your Honor.

Mr. Robnett: I move to strike that out as hearsay.

The Court: It is hearsay. Go ahead, counsel.

Mr. Strong: He was detailing sources from which he obtained information.

The Court: I thought he had finished with that item.

The Witness: I was about to say the total of those items, \$760, \$500, \$186, \$225.72, and \$1187.50, make up the adjustment of income not reported of \$3359.22.

(Testimony of J. Bryant Eustice.)

Mr. Robnett: If the Court please, I move to strike out all the testimony the witness has given in this connection upon the ground that it is partially based upon hearsay, but most of it is a mere assumption and conclusion of the witness. He has used, for instance, one item he testified to which showed that there was a \$10,000 repayment of a loan he previously made. That is not income. Your Honor, of course, knows that in many of the items he has testified to here, he said they were unexplained, so far as he was concerned, and it is purely a conclusion of the witness, and is not the kind of evidence to introduce before a jury to try to convict a man for evading income tax.

Mr. Strong: Income, on unexplained deposits, I think the law is clear that unexplained deposits are income, unless the [287] taxpayer has some explanation.

The Court: I don't know that that is the law. That certainly is the rule which is followed by the Internal Revenue Bureau.

Mr. Strong: I can cite several cases subsequently to your Honor.

The Court: In connection with their calculations.

Mr. Robnett: Other than that, there is no foundation.

The Court: I think all of that rather goes to the weight of the testimony of this witness. Wherever this witness uses the words "I find that his income was such and such, and the adjusted income should have been so much," it must be accepted only as the

(Testimony of J. Bryant Eustice.)

opinion and conclusion of this witness, because, after all, an income tax agent, so far as that phase of his testimony is concerned, is nothing more or less than an expert witness, and the jury may disregard his testimony, if they desire, in that respect. It goes to the weight of his testimony; not to its admissibility.

Mr. Robnett: No proper foundation has been laid for any of it by this witness. Further than that, there is no showing that as to all of these things where he was getting his information from, and he is testifying here today concerning opinions. They may have been opinions, as he admitted as to the bonds, obtained from someone else. It is hearsay. There is not anything authentic about them. I never heard him testify [288] he made all of that report.

The Court: I understood he made the examination of the bank deposits, and he made the examination of the Merril Lynch Company, or whatever the name is. The only assumption, if I understand his testimony correctly, that he made was the assumption that he had purchased this \$1100 in bonds; that he himself did not examine the bonds, and therefore could not testify they stood in the name of that party or this party purchased them.

Mr. Robnett: I don't believe they have laid any foundation that this report he has before him was made by him from things he did examine.

The Court: I understood that that was his testimony. Is that correct? He is asked now to testify

(Testimony of J. Bryant Eustice.)

here, and he is referring to his work papers, and testifying to what he found, and his work papers are for the purpose of refreshing his recollection.

Mr. Robnett: I appreciate that, your Honor, but they are very voluminous. I wonder if he made them all up.

The Court: Did you make up the work papers? Are these your work papers?

The Witness: These are all made up by me, with the exception that some of the writing is not my writing on the reports. That was made by Mr. Phœbus, who was with me during the course of the examination, in going to the banks, and [289] making transcripts. I asked Mr. Phœbus if he would copy some of the ledger cards.

The Court: You examined the original, however?

The Witness: Yes, your Honor.

The Court: He merely did the manual copying?

The Witness: That is correct.

The Court: You examined the original cards, and made the checking yourself?

The Witness: Yes, and an inspection of the deposit slips.

The Court: I think it goes to the weight of the testimony of the witness, and not to its admissibility.

Q. (By Mr. Strong): What you have been discussing now was item 9, income not reported, as shown on the return, is that right?

A. That is correct.

Q. Now item 10, partnership income?

(Testimony of J. Bryant Eustice.)

A. The income tax return showed \$5008.18. There was added to that the \$5200 salary item.

The Court: Which he did report?

The Witness: Which he reported. It was just an adjustment, changing the salary to income from the partnership; for income tax purposes, a partner does not draw a salary. There was no change in the income, additional income from the books and records of the Acme Meat Company. [290]

Q. (By Mr. Strong): Taking all of these items reported on the 1942 calendar year return of Sam Ormont, what was the total amount reported as the income for income tax purposes; that is, the net income? A. For the year 1942?

Q. Yes.

A. Net income reported by the taxpayer was \$10891.52. The corrected——

Mr. Robnett: I object to this as not responsive, if the Court please.

Q. (By Mr. Strong): What was the corrected amount of net income as you claim it?

Mr. Robnett: I object to that as incompetent, irrelevant and immaterial. It is only his opinion.

Mr. Strong: Based on the figures which he has given.

The Court: Yes. Objection overruled.

A. \$14,423.42. [291]

The Court: The additional items of income which you assert he received and did not report were the dividends of \$37.50, the interest of \$135, and these miscellaneous unexplained items of \$3300-odd?

(Testimony of J. Bryant Eustice.)

The Witness: That is correct.

The Court: So far as salary or partnership income return is concerned, the fact is that you shifted them around in the columns here and increased them, and so forth, and he reported all the money he got?

The Witness: Yes.

The Court: You just put them in other columns?

The Witness: Yes. There was no change in the partnership income.

Mr. Strong: Just the salary, as I understand it.

The Court: He just put in another column. He actually reported all the money that he got from the partnership?

The Witness: That is correct.

Mr. Strong: As salary.

The Court: No, he reported his partnership income in addition to that, \$5200 salary and \$5000 partnership income.

Q. (By Mr. Strong): What was the tax as reported by the defendant Sam Ormont for the year 1942? A. \$2477.91.

The Court: You disallowed some deductions there too, [292] didn't you?

The Witness: No deductions?

The Court: Did you disallow some?

The Witness: No, I did not disallow any deductions. The same deductions were allowed on the corrected return.

The Court: As were allowed on the original return?

(Testimony of J. Bryant Eustice.)

The Witness: As were allowed on the original return.

The Court: I see.

Q. (By Mr. Strong): On the basis of the corrected net income as you have testified here, have you computed what his tax should have been?

A. Yes.

Q. How much was that? A. \$3875.84.

Q. Will you state how much the additional unreported amount of income tax was?

A. \$1397.93.

The Court: The additional income was \$3531.90 upon which he would have owed approximately half of that as tax, is that right?

The Witness: That is correct.

Mr. Strong: I am sorry. I didn't get that.

The Court: Read it.

(The record referred to was read by the reporter as set forth above). [293]

The Witness: About one-third.

The Court: Well, \$3500 and \$1397 tax.

The Witness: I was looking at the wrong figure.

The Court: All right. Go ahead.

Q. (By Mr. Strong): Now taking the year 1943, the defendant Sam Ormont's income tax return for that year, item No. 1 was salary. That was reported as what? A. \$650.

Q. And do you claim that there was any additional salary received for that year?

A. No, sir.

(Testimony of J. Bryant Eustice.)

Q. Item No. 2, dividends, were they any dividends reported by the defendant Sam Ormont?

A. None reported.

Q. Do you claim that there were any dividends? A. \$33.75.

Q. Where did you get those items?

A. That was credited to the taxpayer's account at Merrill Lynch, Pierce, Fenner & Beane.

Q. The third item, interest, was there any interest reported by the taxpayer as received?

A. There was none reported on the return.

Q. Do you claim that there was interest which should [294] have been reported?

A. Yes, in the amount of \$249.38.

Q. What is that made up of?

A. Income on bank deposits. I will make sure.
(Examining documents.)

Q. Take the specific items and break it up.

A. There was 81.38 on savings banks deposits.

Q. What bank?

A. \$27.41 credited to the savings account No. 224808 of the Security First National Bank, and \$53.97 credited to the savings account No. 747 of the Bank of America.

Q. Is that all?

A. And \$105 interest on the taxpayer's personal loan to Sam and Ben Borne.

He also received \$63 from a loan made to Frank B. Smith. The loan had been made in 1941.

I believe that makes up the total of \$249.38.

(Testimony of J. Bryant Eustice.)

Q. (By Mr. Strong): Item 4(b) on the income tax return, interest from Government obligations, the sum reported is \$387.50, is that right?

A. That is correct.

Q. Do you claim any additional amounts were received?

A. No changes.

Q. Item 6(a), which is capital gains, what sum is reported on the return? [295]

A. There was none reported.

Q. Do you claim there was any?

A. \$185.87.

Q. Where did you get that?

A. That is from an examination of these records, examination of Sam Ormont's accounts with Merrill Lynch, Pierce, Fenner & Beane which indicated sale of 300 shares of Standard Brands and 15 shares of Socony-Vacuum Oil which were sold in 1943. The profit on those from the sale was \$371.73, which was reported as a capital gain at 50 per cent, or \$185.87.

Q. Now skipping the next item on your summary and going to item 8 for a moment, net profit was reported on the income tax return from the defendant's business for the year. In what sum was that?

A. \$11,525.22.

Q. And do you claim any additional amounts other than that?

A. No additional amount.

Q. Then item 9, which is partnership income, what amount was reported?

A. A loss of \$18.10.

(Testimony of J. Bryant Eustice.)

Q. Do you claim there was any money received in that connection?

A. Well, he received \$650 from that partnership, [296] which he reported as salary. It should have been reported as partnership income and by bringing it down to report as partnership income it shows income from the partnership of \$631.90 instead of a loss of \$18.10. There is no additional income on account of those two items.

The Court: But he actually showed the money received in his return?

The Witness: Yes, there is no additional income on account of these two items.

Q. (By Mr. Strong): That is the same as the item of salary? A. That is correct.

Q. Was there any other undisclosed income which you claim was received by the taxpayer and not reported on this return? A. Yes.

Q. How much?

A. In the amount of \$18,109.30.

Q. Where did you get that from? What items does that consist of?

A. Cash from undisclosed sources deposited to the personal bank accounts of the taxpayer.

Q. How much was that? A. \$1675.

Q. All right. [297]

A. He purchased United States Government bonds during 1943 of \$51,475.

The Court: How much?

The Witness: \$51,475.

(Testimony of J. Bryant Eustice.)

Of these bonds he purchased by checks drawn on his personal bank accounts \$32,390.24, and by checks drawn on his business bank account, that is, Acme Meat Company, \$5000.

It was the total of those two items, that is, from known sources, \$37,390.24. The difference between that and the actual bonds purchased was \$14,084.76, which could not be traced to any known sources and was not explained by the taxpayer where the source of the funds came from. [298]

Q. (By Mr. Strong): Now the total amount of net income reported on the income tax return for the year 1943 was how much?

The Court: What was that last amount of bonds, the difference between \$38,000 and \$52,000?

The Witness: The undisclosed income, \$14,084.76. There were a couple of more items.

Mr. Strong: I am sorry. I thought you were finished.

The Court: Those bonds, the same situation is true there, you don't know whether he bought them or didn't buy them? You are taking some other agent's assumption in that?

The Witness: That is correct.

Mr. Robnett: May I move to strike that out, if the Court please, that whole testimony as to \$14,000, on the ground it is hearsay?

Mr. Strong: We will connect it up with other agents.

The Court: It may be stricken if it is not connected up. You can reserve your motion to strike.

(Testimony of J. Bryant Eustice.)

The Witness: There were checks from undisclosed sources deposited to the personal bank accounts of \$612.54. There were receipts from undisclosed sources deposited to the business bank accounts and credited to Sam Ormont's capital account on the books of the Acme Meat Company of \$1,737.

The total of all these items of income, undisclosed by [299] the taxpayer, amounts to \$18,109.30, which is the amount we have here as item 7 on the adjustments.

Q. (By Mr. Strong): What was the total amount of net income reported by the taxpayer for the calendar year 1943 on the return concerning which you have been testifying?

A. \$11,934.56.

Q. What was the amount which you claim is the correct amount of income that was received by the defendant Sam Ormont for that year?

A. \$30,512.86.

Q. You are talking about the net income?

A. Correct, net income.

Q. Now as to the deductions which were made from the gross income, was there any additional amounts or changes claimed by you over those that were set down by the taxpayer in his income tax return?

A. There were no changes in the deductions.

Q. What is the difference between the two amounts, the amount reported as income tax net in-

(Testimony of J. Bryant Eustice.)

come and the amount which you claim is the correct income tax net income?

A. \$18,057.30.

Q. How much was the tax reported by the defendant Ormont?

The Court: That is for income tax or victory tax? [300]

Mr. Strong: Income tax at this point.

The Court: He has lumped the two together in his figures. I suppose he can figure them out.

Mr. Strong: I would like him to do that, if your Honor has no objection.

The Witness: They are all the way through because that is the way they were reported on the return, as income and victory tax.

Q. (By Mr. Strong): Do your figures show what the income tax net income was that was reported?

A. I don't have them separated any place; no.

Q. Do your work papers show?

A. Not as a separation of income and victory tax, no.

The Court: Victory tax was an increased income tax, wasn't it?

The Witness: It can be computed separately.

The Court: It was an increase in the temporary income tax.

The Witness: Yes, your Honor.

The Court: I do not think he needs to separate it, counsel.

(Testimony of J. Bryant Eustice.)

Mr. Strong: He may do it tomorrow, if it is necessary.

The Court: All right.

Q. By Mr. Strong: Now what was the income tax that was reported? [301]

A. \$3,847.72.

Q. What do you claim is the correct income tax that should have been reported?

A. \$13,461.29.

Q. What is the difference in the tax?

A. \$9,613.57.

Q. Now taking the year 1944, the income tax return of the defendant Sam Ormont for the calendar year 1944, what was the amount of dividends and interest reported by the taxpayer?

Mr. Robnett: I object to this, if the Court please, and any evidence in connection with it, on the ground it is incompetent, irrelevant and immaterial, not within the issues of this case. This is not the return that is alleged in the indictment, and it is at variance from the charges in the indictment. This is the one where your Honor will remember on the question that they have alleged that there was an income and victory tax return made and they have offered or proven no such return.

The Court: Let me see the exhibit, the 1944 tax return.

(The document referred to was passed to the court.)

Mr. Strong: To save time, your Honor, we can leave this and we can take up the other defendant.

(Testimony of J. Bryant Eustice.)

The Court: I think this has to be passed on. The fact [302] is that under the law there was no victory tax during the year 1944.

Mr. Strong: That is right, your Honor.

The Court: The additional allegation in the indictment is surplusage. The objection is overruled.

Mr. Katz: Your Honor please, may I be heard on that with reference to the defendant Himmelfarb?

Mr. Strong: It is not the same allegation as to the defendant Himmelfarb.

The Court: I know, but he has something else to say maybe.

Mr. Katz: I believe in that count both defendants are charged.

The Court: That is right.

Mr. Katz: And consequently I wish to make the objection that the reference there of income and victory tax is a reference to the document that was filed rather than the manner of distributing it. It refers to the filing of a document which is alleged to have been false and fraudulent. And it is my thought that a situation is exactly the same as if the indictment had alleged that an affidavit were false and fraudulent and proof came in that a promissory note was executed.

The Court: No. It alleges a false and fraudulent income and victory tax return. There was no victory return, there was nothing but an income tax return in 1944, so it is [303] merely surplusage. I

(Testimony of J. Bryant Eustice.)

think the defendants are not prejudiced by this. The objection of the defendant Phillip Himmelfarb will be overruled.

This testimony, however, is admissible only so far for the year 1944 in count 1 as against the defendant Sam Ormont only because there has not yet been anything in the evidence to connect the defendant Phillip Himmelfarb with the allegations of count 1.

Mr. Katz: That is my understanding.

Mr. Strong: Yes, that is the same understanding. It hasn't changed yet.

The Court: The jury will be so instructed, and we will proceed.

Q. (By Mr. Strong): Taking the income tax return for the calendar year 1944 of the defendant Sam Ormont, Mr. Eustice, the item of dividends and interest is reported in the sum of \$1,375, is that right?

A. That is the correct amount; \$1375.

Q. Do you claim that there was any extra amount?

A. There was \$1.27.

Q. Where did you find that?

Mr. Robnett: Do you want us to pay it now?

The Witness: I had to tie those figures in and it took \$1.27 to do it. [304]

The Court: Is that what you did, tied them in and added \$1.27?

The Witness: No, your Honor. To balance the bank accounts with the figures I am using on my adjustments as it had been credited to the bank

(Testimony of J. Bryant Eustice.)

account I had to include it as additional income. That was savings account No. 747 at the Bank of America.

Q. (By Mr. Strong): Now as to item No. 5, which is income from business, what is the amount reported on the return? A. \$11,299.57.

Q. Do you have any other figures?

A. I have additional income from the business of \$817.42.

Q. Where did you get those figures?

A. It was deduction made on item 12 of Schedule C of the 1944 income tax return charged to a business expense.

Q. That schedule is part of the document you have?

A. It is part of the income tax return. It is a business schedule of the income tax return.

The Court: You mean you reduced the business expense by \$847 and thus increased the income? Is that it?

The Witness: Well, he increased the expense \$817.42 and thereby reduced the income.

The Court: He reduced his income? This shows an increase [305] of income from business.

The Witness: Well, I am increasing it, adding it back on the report.

The Court: You mean you took it out and then put it back?

The Witness: No, the taxpayer had deducted it on the Schedule C and I am claiming it as an improper deduction.

(Testimony of J. Bryant Eustice.)

The Court: That is what I asked a moment ago.

The Witness: I am sorry.

The Court: In other words, you disallowed one of his deductions?

The Witness: Yes, your Honor.

The Court: Thereby making an increase in his income?

The Witness: Yes.

The Court: What were those disallowances? He reported them, however, did he?

The Witness: Yes, it was charged on the books of the Acme Meat Company as interest and it is charged to interest and credited to an account called accrued interest, Dora Goldberg. The item was further explained as to charge off interest on capital investment of Sam Ormont. [306]

Q. You disallowed that?

A. Yes; it's a non-deductible item of the taxpayer's capital, but it would be reportable as income in any case. It is not allowable as a deduction.

Q. (By Mr. Strong): What, in addition to those adjustments which you made, those additional sums which you gave us of \$1.27, \$817.42, do you claim there was any other income which the taxpayer received during the year, the defendant, Sam Ormont, which he did not report on his income tax return?

A. Yes.

Q. How much?

A. There was income not disclosed by the taxpayer of \$23,989.26.

(Testimony of J. Bryant Eustice.)

Q. Do you mean not disclosed on the return?

A. Not disclosed on the income tax return of the taxpayer.

Q. Where did you get that figure?

A. The total figure is made up of the following items: Cash from undisclosed source, deposited to the personal bank accounts, \$8,800.19.

There was United States Government bonds, purchased during 1944, of \$5,750. Part of that payment was income drawn on the taxpayer's personal bank account for \$750; a check drawn on his business bank account of \$2000, or \$2750 which [307] can be traced to funds that did not represent income. The balance of \$3,000 was paid on government bonds from sources that could not be determined, and was not explained by the taxpayer.

There were checks from undisclosed sources deposited to the personal bank account of \$2057.25.

There were receipts from undisclosed sources deposited to the business bank account of the Acme Meat Company, and credited to the taxpayer's capital account of \$9131.82.

There was repayment made of a loan to Phillip Himmelfarb of \$4000. \$3000 of that was a personal check of the taxpayer drawn on his personal bank account, Security First National Bank. The balance of \$1000 could not be traced or explained by the taxpayer.

The Court: You mean it was not explained in his books?

The Witness: No, by him personally.

(Testimony of J. Bryant Eustice.)

The Court: That may be stricken out as a conclusion of the witness, the statement that it could not be explained by the taxpayer, by him personally.

The Witness: The same method of accounting for all the funds of the taxpayer was used in this case as in 1943 and in 1942. In other words, to account for all of the funds that came from known sources; in addition there were funds that came from these unknown sources which were not explained.

Q. (By Mr. Strong): As to the bonds, where did you get the information? [308]

A. As to the bonds that the taxpayer had in his possession?

Q. Yes.

A. From the schedule supplied by Mr. Phoebus, that he had made up, or, I think in connection with another accountant, of the taxpayer.

Q. I could not hear you, Mr. Eustice.

A. The schedule of the bonds was given to me by Mr. Phoebus.

Mr. Strong: May I have this document marked for identification?

Mr. Robnett: I move to strike all the evidence as to bonds upon the grounds that it is hearsay from the witness.

Mr. Strong: We will connect it up.

The Court: The ruling on that will be reserved.

Q. (By Mr. Strong): What was the total amount of net income for income tax purposes that was reported by the defendant Sam Ormont in his income tax return for the current year 1944?

(Testimony of J. Bryant Eustice.)

Mr. Robnett: May it be understood that my objection runs to all of this testimony pertaining to this?

The Court: Yes. That is right. It will be overruled without prejudice to a motion to renew a motion to strike.

A. The corrected—— [309]

Q. (By Mr. Strong): Not about the corrected account, but as to the amount reported, the income.

A. \$12,174.57.

Q. Do you disagree, or do you claim there was anything wrong with the deduction taken on the income tax return?

A. No, there was no changes in the deductions.

Q. How much is the corrected amount of income which you claim the defendant Sam Ormont received during the year 1944?

A. The correct net income was \$36,982.52.

Q. How much is the difference between the two?

A. \$24,807.95.

Q. How much tax did the defendant Sam Ormont report on his return for the year 1944?

A. \$3,626.58?

Q. How much do you claim was the correct amount which he should have reported?

A. \$14,516.54.

Q. Was the correct amount he should have reported in addition to the amount which you gave?

A. The additional amount of tax.

Q. The correct amount should have been how much? A. \$18,143.12.

(Testimony of J. Bryant Eustice.)

Q. I show you Government's Exhibit 42 for [310] identification, and ask you if you ever saw this document before, which consists of seven pages stapled together. A. Yes, I have.

Q. Was that document used by you in connection with your computation with reference to the bonds that you testified about?

A. Yes, it was. I made a schedule from this document here, or this exhibit 42.

Q. Is that where you got your information as to the bonds?

A. That's where I got my information.

Q. You don't know where that came from?

A. It was handed to me by Mr. Phoebus.

Q. It was handed to you by Mr. Phoebus, the agent who is sitting at government counsel's table?

A. That is correct.

Q. Taking the return for the year 1944, of the defendant Phillip Himmelfarb——

Mr. Katz: At this time, if the Court please, I am going to object to the use of the transcript, and I would like, prior to the objection, to examine the witness on voir dire in connection with it.

The Court: What transcript?

Mr. Katz: The working sheets that are being used.

The Court: You mean the so-called working papers? [311]

Mr. Katz: The working papers, yes.

The Court: You may examine the witness on voir dire.

(Testimony of J. Bryant Eustice.)

Voir Dire Examination

By Mr. Katz:

Q. Mr. Eustice, will you please refer to Exhibit 41? I believe those are your working papers in connection with your investigation of Phillip Himmelfarb's account.

A. These here, of course, I have also.

Q. I am not referring to the summary. I am referring to your working papers.

A. Yes.

The Court: You identify those as your working papers?

The Witness: Yes, they are the original work papers.

Q. (By Mr. Katz): Did you prepare all of those papers yourself?

A. I think I can say the answer is no.

Q. Some of those are in the handwriting of some other person other than yourself?

A. Yes, that is correct.

Q. In the preparation of those working papers that you are using did some other agent, or other agents copy certain records?

A. Yes, that is correct.

Q. Did you in every instance see the original of the records that they copied? [312]

A. No, I do not believe I have so testified.

Q. The working papers you have there refer to, and in part are copied from documents that you had never seen, and never examined yourself?

(Testimony of J. Bryant Eustice.)

A. Part of these. Part of the items that are in these working papers are those exhibits that I mentioned at the time that I had not examined personally.

Q. Do you know of your own knowledge that the matter set forth in the working papers that you intend to refer to are correct?

A. Not all of them.

Q. You have never checked those that were prepared by others against the original records to determine whether they are or are not true and correct?

A. That is true in one or two cases.

Q. Are you in a position to say that the documents that you yourself prepared are true and correct?

A. I don't believe I understand your question.

Q. With reference to any of the working sheets that you prepared yourself, and which were not prepared by others, are you in a position to state that they are absolutely true and correct?

Mr. Strong: I don't understand that question, your Honor.

The Court: I can understand it. Do you understand it? [313] It has got to be pretty simple for me to understand it.

Mr. Strong: And it has to be simpler for me.

The Witness: To the best of my knowledge, any accounts I have copied, or any computations that I have made, they are correct.

(Testimony of J. Bryant Eustice.)

Q. (By Mr. Katz): Did you prepare the transcript of the bank account at the First and Chicago branch of the Bank of America, which I believe is a part of the working papers that you are now looking at?

A. I copied the bank account from December 24, 1942, to January 24, 1944.

The Court: That is the bank account of whom?

The Witness: Of Phillip Himmelfarb.

Q. (By Mr. Katz): Until January 24, 1944?

A. Until January 24, 1944. From that date to January 22, 1945, the bank account was copied by Mr. Phoebus at the same time, and at my request.

Q. Did you at any time check the working papers prepared by Mr. Phoebus against the original records from which they were copied to determine whether those were true and correct?

A. Do you mean did I take these and compare them?

Q. Compare it to see that he had correctly copied them? [314]

A. No, I did not.

Q. At any rate, Mr. Eustice, if any mistakes were made with respect to the items in May of 1944, August of 1944 and December of 1944, with respect to copying that account, those mistakes would not have been made by you?

A. Can I explain that?

Q. Was that within the period prepared by Mr. Phoebus?

(Testimony of J. Bryant Eustice.)

The Court: He just testified it was. The witness has not answered the question. Read counsel's question again.

(Question read by the reporter.)

The Witness: I asked if I could make my own statement.

The Court: No. You can answer it yes or no.

The Witness: May I have the question again, please?

(Question again read by the reporter.)

The Witness: If any mistakes were made, they would not have been made by me, no.

The Court: During that period.

The Witness: During that period, that is, as far as the copying of this particular bank account is concerned.

Q. (By Mr. Katz): Mr. Eustice, do you know of your own knowledge what sources of information were checked by anyone other than yourself who prepared any of these working papers?

A. That is, where they got the information?

Q. Yes. Do you know of your own knowledge where they [315] got the information, other than what you yourself obtained?

A. Only by what they told me.

Q. Other than from what they told you, you would not know?

A. That is, if I did not examine the record myself.

(Testimony of J. Bryant Eustice.)

Q. Any of the information that was obtained in the working papers, whether by you, or anyone else, based upon any information or source other than and different than the exhibits that have been presented here, and introduced and admitted as against the defendant Himmelfarb? Do you know which those are?

The Court: While he is looking at that, will you read that question up to now, Mr. Reporter?

(Question read by the reporter.)

Mr. Strong: I understand that.

The Court: You stopped in the middle of the other question, and asked him another one.

Mr. Katz: That is correct, your Honor. I withdraw both questions, if the court please, and will ask the witness if he knows which of the exhibits that are here before him have been presented and introduced as against the defendant Himmelfarb?

Mr. Strong: Do I understand that that calls for him to recall which exhibits were admitted against Himmelfarb?

Mr. Katz: No, just pick them out. They are all before him. [316]

The Court: I do not know that they will be admitted or not.

We will recess until 10:00 o'clock tomorrow morning. Remember the admonition.

(Whereupon, at 4:45 o'clock p.m., an adjournment was taken until 10:00 o'clock a.m., Wednesday, May 28, 1947.)

Los Angeles, California, May 28, 1947

10:00 o'Clock A.M.

The Court: Ex parte?

The Clerk: Yes.

(Other court matters.)

The Court: United States v. Ormont and Himelfarb.

Mr. Strong: Ready for the Government.

Mr. Katz: Ready.

Mr. Robnett: Yes, your Honor.

The Court: Usual stipulations?

Mr. Strong: Usual stipulation.

Mr. Katz: So stipulated.

Mr. Robnett: Yes, your Honor.

The Court: Proceed, Mr. Strong. There was a witness on the stand.

J. BRYANT EUSTICE

the witness on the stand at the time of adjournment, resumed the stand and testified further as follows:

Mr. Katz: If the Court please, Exhibit 36, which was first marked for identification and a portion of that subsequently admitted in evidence, I am going to request the Court, in order to eliminate confusion, to mark the exhibit that was admitted in evidence as 36-A and that portion of it which is still marked only for identification as 36-B.

The Court: All right. [321]

Mr. Katz: Thank you.

The Court: Do you want it in evidence?

Mr. Katz: Pardon me?

(Testimony of J. Bryant Eustice.)

The Court: 36-B is now in only for identification.

Mr. Katz: Yes. It has always been. It has never been admitted in evidence, and all we ask is that they be segregated so that we know which is in evidence and which is not rather than include them all together under one number.

The Court: Very well.

I think some witness was directed to return at 10:00 o'clock this morning for further cross examination in connection with some records. Have those records been supplied the defendants?

Mr. Robnett: No, your Honor.

Mr. Katz: The witnesses are here with them, I believe.

The Court: If you will step down we will conclude on those matters so that these witnesses can go about their business.

HUGH R. PINGREE

recalled as a witness by and in behalf of the Government, having been previously duly sworn, was examined and testified as follows:

The Court: You were sworn the other day?

The Witness: Yes.

The Court: And you are? [322]

The Witness: Hugh R. Pingree; Bank of America.

The Court: You were to bring some additional records and data?

The Witness: That is right.

(Testimony of Hugh R. Pingree.)

The Court: Have you brought them?

The Witness: Yes.

The Court: The defendants were asking for them. I have forgotten what you were asking for.

Mr. Robnett: Yes. I would like to see them.

The Witness: There is one thing that I have discovered here, Judge. Our original cards showed the account as opened in May of 1942, May 14. I find that that is a typographical error, and it should be March 14. I have brought the records from the opening date of March 14 of '42.

The Court: Is there a card in evidence?

The Witness: There is a photostatic copy that shows it; yes.

The Court: That will be Exhibit 32. Is this the one?

The Witness: That is right; that is correct. That is a typographical error. It should be March.

The Court: March 14?

The Witness: Yes, instead of May.

The Court: 1942?

The Witness: Yes.

The Court: Very well. [323]

The Witness: And I have brought the records from the opening date of March '42 through December 23 of '43.

The Court: And they are in the record already from December 23?

The Witness: Through the year '45.

The Court: All right. These are transcripts of them?

The Witness: Yes. They are certified copies.

(Testimony of Hugh R. Pingree.)

The Court: This will be marked—that was 36—this will be marked 36-C for identification.

(The document referred to was marked Government's Exhibit No. 36-C for identification.)

The Court: That was all the records you were supposed to bring?

The Witness: Yes.

The Court: Any other questions?

Mr. Robnett: I don't remember if he was requested to bring any records of Sam Ormont.

Mr. Katz: No. Those are records of Phillip Himmelfarb, and I believe the Court has asked all the questions necessary.

The Court: This witness may be excused?

Mr. Katz: Yes.

The Court: Permanently?

Mr. Katz: Yes.

The Court: Mr. Strong?

Mr. Strong: Yes. I have no further use for him.

(Witness excused.)

Mr. Strong: I don't know why 36-B was not in evidence.

The Court: It was only offered between certain dates.

Mr. Strong: I have no objection, if the defendants want them, to have all the records that they think are necessary to go in. I wouldn't object to that.

The Court: They are here for identification. Maybe at the appropriate time they may be offered.

Very well.

JAMES E. McCLUNG

recalled as a witness by and on behalf of the Government, resumed the stand and testified further as follows:

The Court: Your name was?

The Witness: J. E. McClung.

The Court: And you are from the Security Bank at Huntington Park?

The Witness: Yes.

The Court: You were sworn the other day?

The Witness: Yes, sir.

The Clerk: Is No. 36-C in evidence?

The Court: No, just marked for identification.

JAMES E. McCLUNG

a witness recalled by and on behalf of the defendants, having been previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Robnett:

Q. Have you brought this morning all of the ledger sheets of the Sam Ormont account or accounts in your bank? A. Yes.

Q. From the beginning?

A. The beginning, 1932 and up to the current date.

Q. '32 was when it was opened?

A. That's right, January 22, 1932. That's the Acme Meat.

Q. Those are the originals that you have here, are they?

(Testimony of James E. McClung.)

A. These are. These are ledger sheets. These are the signature cards.

Mr. Robnett: Do you want to see them, counsel?

Mr. Strong: No. Are they bank records.

Mr. Robnett: Original bank records.

Mr. Strong: That is satisfactory.

The Court: Do you have copies of them?

The Witness: These are the originals.

The Court: Have you made copies?

The Witness: No. Then I have the original ledger [326] sheets, the complete record of Sam Ormont.

Q. (By Mr. Robnett): From the beginning of the account? A. That's right.

Q. Those are originals?

A. Those are. That's the only record we have of these. You called for deposit tickets and withdrawals of his savings account, and that is a complete record of the debits and credits,—the originals.

Mr. Robnett: I will take these up first then. I will ask at this time that the ledger sheets of Sam Ormont's account be marked as our next exhibit.

Mr. Strong: I have no objection to those going in as part of the others, A and B, so they can be kept together. I think it will be easier that way.

Mr. Robnett: I prefer to keep them separate.

The Court: They will be marked for identification Defendant Ormont's exhibits.

The Clerk: Do you want these as one exhibit, Mr. Robnett?

(Testimony of James E. McClung.)

Mr. Robnett: Yes, please. The deposit slips and withdrawal slips of Sam Ormont, of his savings account in the same bank, which seem to bear the number 224808; is that correct?

A. That's right.

Mr. Robnett: I would like to have these marked as the next exhibit for the defendant Sam Ormont. [327]

The Court: For identification or in evidence?

Mr. Robnett: For identification.

The Clerk: J for identification.

(The documents referred to were marked as Defendant Sam Ormont's Exhibit J for identification.)

Q. (By Mr. Robnett): Mr. Witness, this bunch that has this rubber band around it, I assume is complete of the account that that refers to, the Acme Meat Company, or do these others go with them?

A. These go with them in order, like this. They are in order, on the date starting 1932, and ending here at the bottom.

Q. The small ones?

A. That's right. There was a change in form from the large to the small. These are the original entries.

Q. And these are the ones of the Acme Meat Company, or rather of Sam Ormont doing business under the firm name and style of the Acme Meat Company?

A. That's right.

(Testimony of James E. McClung.)

Q. These cards are signature cards?

A. That's right.

Q. When the account was first opened, it was shown to be Ormont and Salter?

A. That's right. Here is his current file. You did [328] not ask for this, but I brought it; I thought I had better bring along the current account. This account is closed out.

Q. When you say current account, it is for the corporation? A. Yes.

Q. Under the name of Acme Meat Company?

A. Yes, that is the corporation. This is under the company. I don't think they were incorporated at the time.

Mr. Robnett: I am asking to have this entire group, with the signature cards, being those of the Acme Meat Company received.

The Court: Let them be marked, the signature cards being K.

The Clerk: Do you want to make them one or two cards?

The Court: Two cards, K-1 and K-2. The others will be L.

(The documents referred to were marked as Defendant Sam Ormont's Exhibits J, K-1, K-2 and L, and were received in evidence.)

Mr. Robnett: There are two groups of ledger sheets. They all go together, however.

The Court: All right.

The Clerk: They will be L.

(Testimony of James E. McClung.)

Q. (By Mr. Robnett): This one of the corporation, that is not necessary, Mr. Witness. Thank you. [329]

Did you bring with you all of the ledger sheets of any and all savings accounts of Mr. Sam Ormont with your bank?

A. I left those last Friday when I was here, I believe it was. They are the ones in evidence already.

Q. They are here?

A. Those are. Today I brought additional deposit tickets, and credit tickets, to go with that card I left here.

Q. The ledger sheets were brought at that time?

A. Yes. There was just one card, a white card.

Q. Were those ledger sheets for the entire account from the time it was opened?

A. That's right.

Q. Did you bring with you, either the other day or today, all of the ledger sheets of the commercial personal account of Sam Ormont? A. Yes.

Q. These are some that you put in this morning?

A. Yes. I have the complete file of both accounts, all the way.

The Court: Three accounts?

The Witness: Yes.

The Court: Personal commercial account, Acme Company's account, and Ormont savings account?

The Witness: They are all here, every one of them.

Mr. Robnett: That is all. [330]

(Testimony of James E. McClung.)

The Court: It will be stipulated, I suppose, that the original bank record may be withdrawn and a copy substituted?

Mr. Robnett: Yes.

Mr. Strong: Yes. [331]

Mr. Strong: This other document which you brought with you, the two documents, what are those?

The Witness: That is an account under Acme Meat Company, Inc. It was not asked for. It is a new account in our branch, and I tried to get Mr. Robnett on the phone three times——

Mr. Strong: I just want to know what it is.

The Witness: It is a ledger sheet showing entries on a new account we have under Acme Meat Company, Inc.

Mr. Strong: What is this card?

The Witness: That is the signature card with the account.

Mr. Strong: I would like to have these marked for identification, your Honor.

The Court: Any objection?

Mr. Robnett: Yes, I object to them on the ground, if the Court please, that those are all after any time involved in this action.

Mr. Strong: I haven't offered them yet.

Mr. Robnett: And they are on a corporation.

Mr. Strong: A lot of these records that were brought in and marked for identification by defense counsel I understand are also after the date.

The Court: And so were some of yours.

(Testimony of James E. McClung.)

Mr. Strong: Yes. This is just another one. [332]

The Court: I think this is probably too remote. I cannot see any materiality to this.

Mr. Strong: I may be able to tie it up. I am simply asking that it be marked for identification so it is available if necessary.

The Court: It can be marked for identification and left here as——

The Clerk: No. 43.

(The document referred to was marked Government's Exhibit No. 43 for identification.)

The Court: Any other questions from this witness?

Mr. Strong: Not from me.

The Court: You may be excused. I suppose you want a receipt from the Clerk?

The Witness: Yes, please.

The Court: All right. Just step down and you can get it later.

(Witness excused.)

The Court: Mr. Eustice, will you resume the stand?

J. BRYANT EUSTICE

the witness on the stand at the time of adjournment, resumed the stand and testified further as follows:

The Court: Do you have other matters?

Mr. Katz: No, this is on the continuation of the voir dire examination. [333]

The Court: Very well.

(Testimony of J. Bryant Eustice.)

Voir Dire Examination

(Continued)

By Mr. Katz:

Q. Mr. Eustice, I believe you now have before you Exhibits Nos. 32, 33, 34 and 35 which you did not personally examine, at least you never examined the original of those exhibits. That is correct, isn't it?

A. I don't have Exhibit 32 here.

Q. I now hand you Exhibit 32.

A. What was the question?

(The question referred to was read by the reporter as set forth above.)

The Witness: That is correct.

Q. (By Mr. Katz): You also have before you Exhibits 36-A and 36-B. Now with reference to Exhibit 36-A, you copied that part of that exhibit for the period from December 24, 1942 to January 24, 1944. That is correct, isn't it?

A. That is correct.

Q. That portion of Exhibit 36-A from January 24, 1944 to the termination date shown on that exhibit was copied by Mr. Phoebus, isn't that correct? A. That is correct.

Q. And the last date that is shown on that is March 22 of 1945? A. That is correct. [334]

Q. Now with reference to Exhibit 36-B, was all of that copied by Mr. Phoebus too or by someone else other than yourself?

A. That was copied by somebody else, yes, other than myself.

(Testimony of J. Bryant Eustice.)

Q. Do you know whether or not that somebody else was Mr. Phoebus or still someone other than Mr. Phoebus?

A. My work papers are there. I think I can say very definitely it was Mr. Phoebus.

Q. What is the last date that is shown on Exhibit 36-B? A. January 23, 1946.

Q. I hand you Exhibit 41 for identification, which are your working papers, Mr. Eustice, and with reference to those will you tell me what is the last date shown on your working papers that purport to be the transcript of Exhibits 36-A and 36-B?

A. I have a copy of 36-B, I think what is marked 36-B here.

Q. Can't you look at the beginning and ending dates on the transcript of that account and tell us for the period for which that transcript was made?

A. You mean this 36-A?

Q. 36-A and B.

A. This is a continuation of the same account here. I see there are two separate parts. That is what was a little [335] confusing here. As I say, I didn't copy this particular account.

The Court: You did not copy any portion of that account, of the Phillip Himmelfarb account?

The Witness: That is right, your Honor.

The Court: That is the answer to your question. He did not copy any portion of it, he said.

Mr. Katz: He didn't copy any portion?

The Court: Any portion of the Phillip Himmelfarb account.

(Testimony of J. Bryant Eustice.)

Q. (By Mr. Katz): You didn't copy any part of that?

A. No, not from this account at First and Chicago Branch.

Q. I understood from the testimony yesterday that you had copied a part of that. If you so testified, that was in error?

A. There was another account here which I was looking at and reading from at that time.

Q. Let's see if we don't get on to that in just a bit, Mr. Eustice. Let me ask you this——

A. I beg your pardon. I think probably you are right. I had in mind that that account was not at First and Chicago. And another reason of course is that I haven't this so fixed in my mind because I didn't use any of these accounts in the determination of Mr. Himmelfarb's income. [336]

Q. You did not use those records in making any such determination? A. That is correct.

The Court: You had no recourse to them at all?

The Witness: I had just for information, but I mean in the actual determination of his income.

The Court: You did use them for information?

The Witness: For information; yes, your Honor.

Mr. Strong: May we have the witness state what records he is talking about?

The Court: He is talking about the transcript of the bank account of Phillip Himmelfarb at the First and Chicago Branch of the Bank of America. Is that right?

The Witness: Yes.

(Testimony of J. Bryant Eustice.)

Mr. Strong: For what period, your Honor?

The Court: Any period.

Mr. Strong: I don't know that the witness understood that to be the question.

The Court: What period did you use for information?

The Witness: Well, I made just an examination of the whole account but I didn't actually use it in the computation of the taxpayer's correct income.

The Court: All right.

Q. (By Mr. Katz): Mr. Eustice, will it help you if I tell you that [337] the transcript of that account as shown in your working papers——

A. Yes, I have it here now. Thank you. The last date on here was December 19, I believe—I will check and be sure of that—1945. Yes, that is correct.

Q. December 19, 1945 is the last date?

A. Yes.

Q. And the first date is December 24, 1942?

A. That is correct. [338]

Q. Now, is it still your testimony that you did not copy any part of that?

A. I copied from December 24, 1942 to January 24, 1944.

Q. You did copy a part of that record?

A. That's correct.

Q. What was actually done, you went to the bank and got these statements or ledgers, and you took part of them, and gave part of them to Phoebus, and each of you sat down and copied the part that you got, is that correct?

(Testimony of J. Bryant Eustice.)

A. That is right.

Q. You did not examine the part he received and copied from, nor did he examine the part that you received and copied from, is that correct?

A. Yes. I did not check it in detail.

Q. You did not check his work back at all, did you?

A. No, not what you would call a check-back on it.

Q. You did not verify the figures he copied by checking those against the originals?

A. That's right.

Q. And he did not check the figures you copied by checking your figures against the originals?

A. That's right. We put the balance, to know whether they were correct or not.

Q. You put the balance down from the ledger sheets?

A. And as we go along, probably every week, or every [339] month, we put in the balance shown in the bank account, to show whether those figures are taken off of the bank account.

Q. Your working papers include a purported transcript of an account in the name of the defendant, Phillip Himmelfarb, with the Bank of America, Santa Fe Branch, do they not?

A. The savings account you refer to?

The Court: Any account.

Q. (By Mr. Katz): Any account.

A. Savings account No. 8136, Bank of America, 3801 Santa Fe Avenue.

(Testimony of J. Bryant Eustice.)

Q. And a record of a commercial account?

A. Yes, in the name of Phillip Himmelfarb, doing business as Phillip's Meat Company.

Q. With reference to the first, the savings account that you mentioned, Mr. Eustice, Exhibits 32, 33, 34, 35 and 36, or any other exhibits before this Court, do they constitute a record or copies of a record of the savings account at the Bank of America, Santa Fe Branch?

A. If I understand your question, you mean these exhibits do not have any connection with this particular bank account?

Q. What I am referring to is this, Mr. Eustice: You have a transcript there with reference to matters which are not in evidence here, both by way of original records, or [340] photostatic copies of such records.

The Court: They are not records in evidence here from the Santa Fe Branch of the Bank of America?

The Witness: These exhibits do not apply to that.

Q. (By Mr. Katz): Who prepared the transcript of that savings account of the Bank of America, Santa Fe Branch?

A. I made that transcript.

Q. All of it? A. All of it.

Q. You made this from original records?

A. From original records at the bank.

Q. With reference to the transcript of the commercial account in the name of Phillips' Meat Com-

(Testimony of J. Bryant Eustice.)

pany, or Phillip Himmelfarb, doing business as Phillip's Meat Company, who made the transcript of that account?

A. I made it all complete.

Q. It is all in your handwriting, and likewise with reference to that account there are no exhibits here that you have seen, or heard presented here, that in any way refer either to the original records, or copies of those records—the commercial account you have just mentioned, of Phillip Himmelfarb, or the Phillip's Meat Company?

A. That is correct.

Q. Your working papers also include a purported [341] transcript of an account in the name of Morris Rose or Ruth Himmelfarb, a savings account at the Bank of America, First and Chicago Branch, a joint account in the name of Morris Rose and Ruth Himmelfarb, doesn't it?

A. I will say it does. I have it indexed here, yes.

Q. I would like for you to look at this time at the transcript, and tell me if the transcript of that account was made by you?

A. Yes, that account is all in my handwriting too.

Q. You prepared all of it? A. Yes.

Q. It is likewise true, with reference to that account, that there are no exhibits before this Court, either as original records, or copies of the records of the account of Morris Rose or Ruth Himmelfarb, in the savings account of the Bank of America?

(Testimony of J. Bryant Eustice.)

Mr. Strong: That is objected to, that question, as well as the others, because these accounts weren't used by the witness. What difference does it make whether they are here or not? We are not relying on them.

The Court: The objection will be overruled. Read the question.

(Question read by the reporter.)

A. That's correct.

Q. (By Mr. Katz): Your working papers also include, and I believe it [342] is the last page of your working papers, an inventory of certain items of personal property, documents, in the possession of the defendant Himmelfarb, is that correct?

A. That is correct.

Q. That inventory is not in your handwriting, is it?

A. No, it is not.

Q. You did not make any part of it?

A. No part of it.

Q. You were not present when that inventory was taken, were you?

A. No, sir.

Q. You didn't see any of the items of personal property, or examine any of the documents or papers that are listed in that inventory, did you?

A. No, sir.

Q. Are there any other matters, Mr. Eustice, which are included in these working papers, which were obtained by a person or persons other than yourself, that have not already been mentioned here by you?

(Testimony of J. Bryant Eustice.)

A. Well, there is a piece of paper here showing rental expenses, which was presented to me by the taxpayer himself.

Q. Presented to you?

A. Yes, sir. Do you want all these miscellaneous——

Q. Whatever items you have in there that were obtained by someone other than yourself. [343]

A. There was a request for an income tax return. That is prepared by Mr. Phoebus; his memorandum on the telephone conversation with Mr. Mailin.

Q. That was a telephone conversation by whom?

A. It is in Mr. Phoebus' handwriting.

Q. It is in Mr. Phoebus' handwriting?

A. I presume it is by him.

Q. With a person who is not connected with this case as a party, is that correct?

Mr. Strong: I object to that question. That remains to be determined.

Mr. Katz: It is getting a little late in the day.

The Court: I would think so.

Mr. Strong: He said not connected with this case.

The Court: As a party. He certainly is not the United States Government.

Mr. Strong: No, not yet.

The Court: And we already have the defendants identified. You may answer the question, if you know.

A. I don't know as I understand the question.

(Testimony of J. Bryant Eustice.)

Q. Was Mailin a party to this case?

Mr. Strong: I will stipulate he is not a party.

A. No. [344]

Q. (By Mr. Katz): Any other documents or records there made by anyone other than yourself?

A. There are three pages of memorandum here that was made by Mr. Phoebus.

Q. And does that about cover all of the items in that transcript, those working papers?

A. Yes. Anything else is just miscellaneous figures.

Q. Now, Mr. Eustice, it is true, isn't it, that the work sheets made by any person other than yourself won't refresh your recollection as to any original documents that you had never examined or hadn't seen?

A. I don't think of any instance where it would.

Q. You can't think of any instance in which your——

A. I may later.

Q. ——in which your recollection may have been refreshed by someone else with respect to something you had never seen?

The Court: That is the question you just asked, and he answered it.

Mr. Katz: Yes, your Honor.

Q. Mr. Eustice, some of the information included in your working papers is based upon what some person or persons told you, or your associates, is it not?

A. Yes, what they told me in the *handing me* of the [345] records.

(Testimony of J. Bryant Eustice.)

Q. Now would you refer to your transcript of the bank account at the Bank of America, First and Chicago Branch, of Phillip Himmelfarb and to the exhibits 36 and 36-A, and I will ask you to look at 36-B, and tell me if that exhibit shows a deposit on May 18, 1944, in the sum of \$50.

Mr. Strong: I object to this. Now we are going into the substance. I thought this was voir dire as to the documents.

The Court: It is. Objection overruled. Voir dire as to the competency of this witness to testify concerning the matters which are in his report.

Mr. Strong: Concerning the matters which he used as a basis for what he testified to. He hasn't been shown that he has used any of this.

The Court: The objection is overruled.

The Witness: What was the date, Mr. Katz?

Q. (By Mr. Katz): On May 18, 1944, a deposit of \$50.

A. You are asking me, is that on the transcript?

Q. I am asking you if you find it first on Exhibit 36-A or B—probably it will be in B.

A. May 18, 1944?

Q. Yes.

A. It is on the ledger card. [346]

Q. Is it? A. Yes, sir.

Q. Now will you take a look in your transcript of that account and tell me whether your transcript shows an item on May 18 of 1944 of a deposit in the sum of \$50.

A. Not on the transcript.

(Testimony of J. Bryant Eustice.)

Q. There is none?

A. There is no deposit, no \$50.

Q. All right. To the extent that that transcript that was made by you and Mr. Phoebus together——

A. Could you please make that definite? I think the record shows who made the transcript. Of course it wasn't used anyway.

Q. I will withdraw that.

To the extent——

The Court: The witness says it wasn't used. You did have recourse to it for information, did you not?

The Witness: Yes, to see whether or not I was going to use any part of it.

The Court: For information.

The Witness: Yes, to see whether it was going to be essential in the examination. I determined that it wasn't essential.

The Court: If it was used for information, it was used.

Q. (By Mr. Katz): Now, Mr. Eustice, to the extent that [347] the transcript fails to show and record the \$50 deposit made on May 18, 1944, as shown by the bank account records, the transcript is in error, is it not?

A. Yes, there would be \$50 more.

Q. It is inaccurate and incorrect to that extent, isn't it? A. Yes, sir.

Q. Now will you take a look at your bank record for August 2, 1944, and tell me if you have a deposit there in the sum of \$30 for that date?

A. No \$30—there is \$30 on the account, yes.

(Testimony of J. Bryant Eustice.)

The Court: But none in your transcript?

The Witness: It is not in the transcript.

Q. (By Mr. Katz): It is again true, is it not, Mr. Eustice, that to the extent that that item appears in the original record of that account and does not appear in your transcript, that your transcript is incorrect and inaccurate to that extent?

A. Yes, this transcript would be inaccurate to that extent.

Q. I will now ask you to look at your transcript first and tell me if that shows a deposit on December 1, 1944, in the sum of \$50.

A. December 1, '44?

Q. Yes. [348]

A. There is no deposit on the ledger card.

Q. There is in your transcript, isn't there, under that date? A. There is an item of \$40.

Q. It is an item of \$40 in your transcript, is that right? A. In this transcript.

Q. And there is no corresponding item of \$40 on that date in the original record from which that transcript purports to be a transcript, is that correct? A. That is correct.

Q. And it is again true, is it not, that your transcript is incorrect and inaccurate to the extent of that item?

Mr. Strong: Objected to because we don't use that item. There is no showing we intend to use it and this is on a collateral matter.

The Court: The objection is overruled, and the jury instructed to disregard the remarks of counsel

(Testimony of J. Bryant Eustice.)

that they haven't used it. If this witness used that for the purpose of getting information, it was used.

Mr. Katz: Will you read the question, Mr. Reporter?

(The question referred to was read by the reporter, as follows:

("Q. And it is again true, is it not, that your transcript is incorrect and inaccurate to the extent of that item?") [349]

The Witness: That is correct.

Q. (By Mr. Katz): Mr. Eustice, I will now ask you to check your transcript again under date of September 13, 1944, and tell me whether or not the transcript shows the issuance of a check in the sum of \$87.78 on that date.

A. September 13, 1944?

Q. Yes.

A. What is the question, please?

Q. Does your transcript show a check in the sum of \$87.78 on that date?

A. No, it does not.

Q. Will you take a look at the bank record and tell me if the bank record shows a check in the sum of \$87.78?

A. On September 14?

Q. On September 14. A. Yes, sir.

Q. \$87.78? A. That is correct.

Q. Your transcript shows no such item?

A. That is correct.

Q. To the extent that your transcript fails to show the item in the amount of \$87.78 that appears

(Testimony of J. Bryant Eustice.)

in the original records of the bank account of which that transcript purports to be a transcript, your transcript is inaccurate and incorrect, [350] is it?

Mr. Strong: So stipulated.

Mr. Katz: I will accept that stipulation.

Q. Mr. Eustice, do you believe that if a little more time were allotted for the purpose of checking and verifying those figures in your transcript that it is probable that other and further errors will be discovered?

Mr. Strong: Objected to, your Honor.

The Court: Objection overruled.

The Witness: I wouldn't testify as to the accuracy of any report if I didn't use the figures in my computations. Where I have used the figures in my computations, and if I had used these, these errors would have been discovered.

Mr. Katz: I move to strike that, if the Court please, as a conclusion of the witness, as to whether they would or would not have been discovered.

The Court: It may be stricken, and the jury instructed to disregard it.

The Court: Read the question to the witness.

(The question referred to was read by the reporter, as follows:

("Q. Mr. Eustice, do you believe that if a little more time were allotted for the purpose of checking and verifying those figures in your transcript that it is probable that other and further errors will be discovered?") [351]

(Testimony of J. Bryant Eustice.)

The Witness: I can't answer that question.

The Court: You haven't verified them, is that it?

The Witness: None of these items that he refers to is any part of the transcript that I took off from the bank.

The Court: Very well.

Q. (By Mr. Katz): It is likewise true, isn't it, Mr. Eustice, that the part of the transcript that you took off, you copied and never did check back to verify the figures that you copied against the documents from which you copied them?

A. I never checked back or used it when I completed it. I knew it wasn't essential in the examination.

Q. And you weren't depending upon it at all for its accuracy, were you?

A. That is correct.

Q. And you know that it isn't accurate, don't you?

A. To the extent that you have drawn my attention to it here.

Q. And to the extent of any other errors that may be in there?

Mr. Strong: That is speculative.

The Witness: I don't know that there are any other errors in that.

Q. (By Mr. Katz): You never checked to determine that, is that correct? [352]

A. I have never checked it.

Mr. Katz: No further questions.

(Testimony of J. Bryant Eustice.)

Direct Examination

(Continued)

By Mr. Strong:

Q. Mr. Eustice, in making your examination into the income tax return for the year 1944 for Mr. Phillip Himmelfarb, did you look into other documents and sources that haven't been brought out here at all? You can answer that yes or no.

A. Yes, sir.

Q. And did you look at other papers and documents which aren't in this court room at all?

A. It is possible I did; yes.

Q. Did you have discussions with the defendant?

A. I had discussions with the defendant; yes, sir.

The Court: If there are any other papers upon which he bases his conclusions, they should be brought into the court room, because the method here of having an Internal Revenue Agent getting up to testify as to what his conclusions and his findings are from what he found from here and there is a method which is recognized as shortcutting the usual method of proving a fact in court, to produce the original documents and all of the people. Therefore the greatest latitude should be allowed in testing the accuracy, and if there is any document at all from which he took any information concerning this investigation they should be produced and disclosed. [353]

Mr. Strong: That is precisely my point, your Honor, as to any document on which he relied in reaching these conclusions. My point is that he didn't allow—

(Testimony of J. Bryant Eustice.)

The Court: It isn't a question of what this witness relied upon. The jury are going to decide whether he is right or wrong. If it was this witness' sole conclusion as to what he relied on there wouldn't be any use of having a trial.

Mr. Strong: But, your Honor, that is precisely my point, that the amount which he is going to testify has nothing to do with these items. That is why I objected that it is immaterial.

The Court: The jury will disregard the statement of counsel. They will have to decide what has to do with what. Proceed with your examination. [354]

Mr. Strong: Very well, your Honor.

Q. As to these bank accounts which were testified to by you here, of which you have entries in your records, in making your determination as to the income tax, or the income for the year 1944 reported by Mr. Himmelfarb, did you take those bank records, and those figures, into account?

A. No, sir, I did not.

Q. As to the Bank of America account, that counsel asked you about, which you have on your work papers, did you take any figures from that account into account in making a determination as to the income of the defendant Himmelfarb for the year 1944?

A. No, sir, I didn't.

Q. The Security First National account, which you testified about, of which you have some entries in your work papers?

(Testimony of J. Bryant Eustice.)

Mr. Katz: That is objected to, your Honor. There is no Security First National.

Q. (By Mr. Strong): The Santa Fe Branch, did you take any of those figures into account?

A. No, sir, I didn't.

Q. The account that was referred to here, the savings account of the defendant, did you take any of those figures into account in determining what his net income was for the year 1944? [355]

A. No, sir, I did not.

Q. And did you use any of this so-called transcript which you referred to here, the figures made by Mr. Phoebus, in determining what the defendant's net income was for the current year 1944?

A. No, sir, I did not.

Q. Will you state what records, what documents you did use in determining what the defendant's net income was for the year 1944?

A. The income that the taxpayer, or Mr. Ormont had——

Q. This is Mr. Himmelfarb.

A. What was called a partnership return, for a fiscal period, which is in evidence here, showing so much income which had been collected during the period covering that fiscal period.

Q. I show you Government's Exhibit No. 6. Is that the return that you are referring to, so-called fiscal year return?

A. Yes, sir, that's correct.

(Testimony of J. Bryant Eustice.)

Q. What other documents and records did you use in ascertaining Phillip Himmelfarb's income for the current year 1944?

A. The books of the Acme Meat Company.

Q. Those were made available to you by whom?

A. By Mr. Ormont.

Q. What other documents and books and records that you [356] used?

A. I don't believe there were any.

Q. You have that document in front of you, which you used here, the summary. Will you look at that, and see if there were any other documents that you used besides this income tax return, Government's Exhibit 6, that you testified to, besides the books and records of the Acme Meat Company,—any other books and records or documents in addition to those two, that you may have used in ascertaining the income of the defendant Himmelfarb for the year 1944?

Mr. Katz: If the Court please, with reference to that summary, as I understood it from the testimony of this witness, they were summaries of the matters they arrived at. They used working papers. I object to the use of the working papers. I object to the use of any summary based upon any working papers.

Mr. Strong: This is on voir dire. We are discussing the income used in the working papers. All I want to know is what documents he used so that we can go into the competency of the papers.

(Testimony of J. Bryant Eustice.)

The Court: This then is still preliminary?

Mr. Strong: Yes.

The Court: All right. You remember the question?

The Witness: I believe so, your Honor.

Q. (By Mr. Strong): In other words, I want to know all the books and [357] records which you used in determining the income of the defendant Himmelfarb for the year 1944. You have given already the income tax return, which is Government's Exhibit 6. You have already stated the books and records of the Acme Meat Company.

The Court: When you say he used, do you mean he had recourse to them?

Mr. Strong: What he actually used.

The Court: What he used to determine the income is a mental process. If he got information from some place, he used it.

Mr. Strong: I mean like the work papers.

The Court: He used it then?

Mr. Strong: That I refer to as having recourse, and using it in determining the income. What he relies on.

The Court: Use the word "rely" instead of "used," because everything he looked at he used.

Mr. Strong: I will use the word "rely."

Q. Will you state what documents and records you relied on in order to determine the income of Phillip Himmelfarb for the current year 1944, enumerating them one by one?

(Testimony of J. Bryant Eustice.)

A. Well, I relied for the additional income, that is, one phase of it, on this return that we have here, Exhibit 6.

Q. Government's Exhibit 6.

A. Exhibit 6. [358]

Q. What else?

A. And the account of Phillip Himmelfarb on the books of the Acme Meat Company.

Q. That you testified to before?

A. Yes, sir.

Q. Any other books or records, or documents of any kind that you relied on?

A. I used the slip of paper that Mr. Himmelfarb gave me himself regarding his rental income, which is not a large item.

Q. Do you have that?

The Court: That is, using the account of Phillip Himmelfarb on the books of the Acme Meat Company, you used in that connection the books and records of the Acme Meat Company, to verify that, did you? A. Yes, sir.

Q. So you used all the books and records of the Acme Meat Company?

A. That is correct, your Honor.

Q. (By Mr. Strong): Do you have those books and records?

A. Of the Acme Meat Company?

Q. Yes. A. No, sir.

Q. Where did you see them?

A. In the office of the Acme Meat Company.

Q. Is that where you left them?

A. That is where I left them.

(Testimony of J. Bryant Eustice.)

Q. May I have that slip of paper?

A. Do you want it taken out?

Q. Yes, please.

A. I had this for information. I don't believe this went into the actual computation. That is, I had this piece of paper from Mr. Himmelfarb for information, but I did not actually go into the computation with it.

Q. Look at that summary, and see if there isn't an item dealing with rent in connection with which you may or may not have used it? If so, we want to know.

Mr. Katz: I object to that as leading this witness. He is an intelligent witness, and he doesn't have to be led.

The Court: I don't think that question is objectionable.

Q. (By Mr. Strong): Which is the paper that you got from Mr. Himmelfarb?

The Court: Mr. Witness, you have in that folder there—I think that is Exhibit 40, is that right?

A. 41.

Q. Relating to Phillip Himmelfarb?

A. Yes.

Q. You have in that folder there all of the information that you took into consideration in making your calculations [360] in connection with this claim of underpayment of tax, do you?

A. Well, this—

Q. Except that?

A. Exhibit 6. And the income tax return itself.

(Testimony of J. Bryant Eustice.)

Q. But nothing else? That contains all the information that you took into consideration in any manner in connection with your calculations?

A. And information given to me by the Special Agents.

Q. And other information by the Special Agents? A. That is all, your Honor.

Q. Is it recorded in there?

A. In the work papers?

Q. Yes. A. No, your Honor.

Q. It is not?

A. Not in my work papers.

Q. That was oral information?

A. That is correct.

Q. (By Mr. Strong): Do you have that paper which you say you used?

A. Do you mean in connection with the rents?

Q. Yes.

A. I wish to change that to the extent that I didn't use that in my computations there.

Q. Only those two documents, the books and records of [361] the Acme Meat Company, and the fiscal year return, which is Government's Exhibit No. 6, and the return of the defendant for the current year?

Mr. Katz: I object to that as not being a correct statement of the testimony of this witness just related pursuant to a question your Honor put to him.

Mr. Strong: I am not stating. I am asking.

(Testimony of J. Bryant Eustice.)

The Court: It is not a fair assumption of all the facts in evidence. However, I think we know what information he took into consideration. Now, if I understand your testimony correctly, you took into consideration Phillip Himmelfarb's return, the partnership return, and the data and information gathered together in that file, and all statements made to you by other agents?

The Witness: I believe that sums it up completely, your Honor.

Mr. Katz: I don't understand.

The Court: He said he believed that sums it up completely. And we will take the morning recess. Remember the admonition.

(Short recess.) [362]

The Court: Usual stipulation?

Mr. Strong: So stipulated.

Mr. Katz: So stipulated.

Mr. Robnett: Yes.

The Court: Proceed.

The Witness: Your Honor, could I have the last question read?

The Court: The other reporter has it.

The Witness: Could I make the point that I wanted to bring out?

The Court: Do you wish to add something to your answer?

The Witness: Yes.

The Court: All right.

(Testimony of J. Bryant Eustice.)

The Witness: And that is the fact that these work papers are—I think you asked me the question if they were used——

Mr. Katz: Sorry. I cannot hear the witness.

The Witness: His Honor asked me if I used the working papers, Exhibit 41.

The Court: I asked you if you had recourse to it or to the information in them.

The Witness: I wanted to be plain that I did not use any of these work papers in the determination of the defendant's income tax.

The Court: You mean you didn't use any of the information contained therein in making your calculations?

The Witness: That is correct.

The Court: You did have recourse to the information contained therein, however, in your investigation?

The Witness: I investigated these accounts to see whether they were to be of any value to me in determining his income tax.

The Court: All right.

The Witness: After I had done that——

The Court: You disregarded the information?

The Witness: I disregarded the information.

The Court: Very well.

Q. (By Mr. Strong): That is the working papers, Government's Exhibit 41?

A. Yes, sir.

Q. Just one more question. I think there was reference made to the working papers constituting

(Testimony of J. Bryant Eustice.)

a transcript of the bank accounts that were referred to. Are they a transcript?

A. That is for this bank account at First and Chicago?

Q. Yes.

A. This was taken some time ago, it was copied; the part that I copied indicates that it was taken from the ledger accounts of the Bank of America at First and Chicago.

Q. Was that a complete transcript of the accounts? [364]

The Court: He stated that it was not, the part that he copied was not, and the others had been supplied.

When you copied that you intended to make an accurate copy, did you?

The Witness: That is correct, your Honor. I am testifying to the part that I copied.

The Court: You intended to make an accurate and true copy of what those records reflected?

The Witness: Yes, your Honor. As far as I know, my copy is an accurate and true copy.

Q. (By Mr. Strong): Do you know whether Mr. Phoebus made a transcript?

Mr. Katz: That is calling for a conclusion of this witness.

The Court: Objection sustained.

Mr. Strong: Your Honor, the word "transcript" was used, and I want to clarify it.

The Court: The witness used it. I think it is clarified.

(Testimony of J. Bryant Eustice.)

Mr. Strong: No further questions on the voir dire.

The Court: Proceed with your examination.

Do you have any voir dire questions, Mr. Robnett?

Mr. Robnett: No, I didn't understand that this was against our defendant, this particular testimony.

The Court: Yes, this witness' testimony yesterday afternoon all related to your *defendant Robnett* exactly, your Honor, but not this particular testimony as to Mr. Himmelfarb.

The Court: All right.

Mr. Strong: Except that they are both named in the same count, your Honor.

Mr. Robnett: I object to any testimony from the witness regarding Mr. Himmelfarb and Mr. Himmelfarb's report or return of income tax or anything in connection with it, on the ground that it is hearsay as to the defendant Sam Ormont, and incompetent, irrelevant and immaterial, no connection having been shown between them.

Mr. Strong: That will be tied up, as we have been going along previously.

The Court: Very well. I will reserve ruling on the objection.

Mr. Katz: If the Court please, may I at this time object to the use of the working papers and the use of the summary made therefrom and that both the working papers and the summary be not in any way referred to by Mr. Eustice in any testimony that he may be called upon to give.

(Testimony of J. Bryant Eustice.)

The Court: He has already referred to them in the testimony.

Mr. Katz: If I recall correctly, your Honor——

The Court: Although I do not think he did with relation to Phillip Himmelfarb. [366]

Mr. Katz: It was because of the intended use of those records, if the Court please, that this examination was made.

The Court: Yes. I understand. All right.

Mr. Katz: I now predicate my objection upon the basis of such examination.

The Court: Your objection is good, that is, to the use of the working papers, which will remain, however, marked for identification.

Mr. Strong: I would like the record to show that the witness has had the working papers taken away from him and that they are given back to the Clerk. Now I will examine him without the working papers.

Mr. Katz: Will that also include the summary, if the Court please?

Mr. Strong: Not the summary.

The Court: No. He testified that he disregarded all of the information in his working papers in making the summary, and that portion of the objection will be overruled. That goes, however, to the weight of his testimony and not to its admissibility.

The Witness: Your Honor, in looking at the adjustment here I believe I overlooked the fact that Phillip Himmelfarb was in operation for himself in the first part of 1944 before he joined Sam Or-

(Testimony of J. Bryant Eustice.)

mont and he had income from that business operation. I examined those books and records of the Phillip's Meat Company but I did not make any change in his income as [367] a result of that examination.

The Court: Did you examine his bank account in that connection of the Phillip's Meat Company?

The Witness: Yes, your Honor.

The Court: All right. Proceed.

Q. (By Mr. Strong): Did you rely in making your computations of the income for Phillip Himmelfarb for the year 1944, did you rely upon any of the figures which you obtained from the books of the Phillip's Meat Company as you just testified?

A. You mean in the determination of the additional income?

Q. Yes. A. No, I did not.

Q. Did you rely upon the bank account which his Honor just asked you about?

A. No, I didn't. There was no change on that income from the Phillip's Meat Company.

Q. Will you please look at the summary that you have with reference to Phillip Himmelfarb for the year 1944——

Mr. Robnett: We understand that this testimony is going in subject to my objection that I have heretofore made?

The Court: Yes, that is correct, without restating it.

(Testimony of J. Bryant Eustice.)

Q. (By Mr. Strong): Would you look at the income tax return of Phillip [368] Himmelfarb for the calendar year 1944, which is Government's Exhibit 3, I believe, in evidence? A. No. 4.

Q. Exhibit 4—and also look at the income tax return of Mrs. Phillip Himmelfarb, which is Exhibit 5 in evidence. Will you state what the return of Phillip Himmelfarb shows as having been reported by Phillip Himmelfarb as his salary for the calendar year 1944? A. \$4500.

Q. Do you disagree with that figure?

A. Yes, I did.

Q. What did you claim, if anything, as the correct figure for salary received by Phillip Himmelfarb during 1944?

Mr. Katz: Objected to, if the Court please, as no foundation laid, incompetent, irrelevant and immaterial, the records would be the best evidence as to what the facts are with respect to that matter. It is incompetent, irrelevant and immaterial, not bearing on any issue in this case.

The Court: Yes. I think you are going to have to produce some records along here some place, Mr. District Attorney.

Mr. Strong: Well, your Honor, he has testified to the records which he used.

The Court: I know he did.

Mr. Strong: I have produced the income tax returns. [369]

The Court: Yes.

(Testimony of J. Bryant Eustice.)

Mr. Strong: And the only other records are the books and records of the Acme Meat Company.

The Court: Well, actually the jury has to make this determination, whether he is right or not, and they are entitled to the same information that he had.

Mr. Strong: But he only relied on those documents.

The Court: He relied on the books and records.

Mr. Strong: Of the Acme Meat Company.

The Court: That is correct.

Q. (By Mr. Strong): Do you have the books and records of the Acme Meat Company?

A. No, I have not.

The Court: You did have access to them, however, in making your calculations?

The Witness: Yes, sir.

Q. (By Mr. Strong): Where did you last leave them or see them?

Mr. Katz: That has been asked and answered, and has no bearing on any issue, if the Court please.

Mr. Strong: We don't have those books and records, your Honor, but we have some computations which the witness made from them.

Mr. Katz: Neither do we, your Honor. [370]

The Court: I cannot help it. It is still hearsay. Unless you produce the books and records here from which they are made so that the parties themselves may examine them and the jury, if they desire, may look at them.

(Testimony of J. Bryant Eustice.)

Mr. Strong: They are not available to us, your Honor. I don't want to state the reasons in court.

The Court: There are processes of the United States Government to use and you have the processes of this court.

Mr. Strong: Does your Honor suggest that I could use that process in a criminal case as to these books without going further into the books?

The Court: I am not suggesting anything. I am just reminding you that the law is here. Here is the body of the law which you can avail yourself of. I am not saying in advance whether you can correctly or properly do so, but I am saying that you cannot produce a witness on the stand who has gathered information from books which are not here and which the parties do not have available to examine and which the jury can see. Otherwise it is the rankest kind of hearsay.

Mr. Strong: I know it is a little early, but may I ask that your Honor adjourn at this time so that I can attempt to secure these books and records?

The Court: Do you have other witnesses here?

Mr. Strong: I have other witnesses but their testimony is based upon the testimony of this witness. [371]

The Court: I am not disposed at all to grant your request. You stated last week, and we got a late start——

Mr. Strong: I will withdraw the request. May I withdraw the witness for the time being?

(Testimony of J. Bryant Eustice.)

The Court: Have you concluded his testimony in so far as the defendant Ormont is concerned?

Mr. Strong: Yes, I think I have.

The Court: All right. Then Mr. Robnett can cross examine on Sam Ormont.

And, Mr. District Attorney, your contention is not that he was an owner of the business but that it was a salary that he received. Therefore the inference certainly exists that they were not his books that were examined.

Mr. Strong: I don't know that I made that contention, your Honor. We contend that he was part owner.

The Court: That is what your statement says right here, your summary.

Mr. Strong: That is what the income tax return shows.

The Court: No, these are the assessments. The increase is almost entirely from the adjustments by adding to his salary. [372]

Cross-Examination

By Mr. Robnett:

Q. Mr. Eustice, you started your said investigation of the income of Mr. Ormont for the years 1942, 1943 and 1944 on or about what date?

Mr. Katz: May we have the same understanding with reference to the cross-examination of this witness as we have with respect to the direct examination, that it is not binding upon the defendant Himmelfarb?

(Testimony of J. Bryant Eustice.)

The Court: You mean the understanding is that you will be deemed to have made an objection to each question?

Mr. Katz: Yes, and that your Honor has made the same ruling you have heretofore made.

The Court: If you make objection to that question——

Mr. Katz: I do so.

The Court: I will sustain the objection. And the same objection will be deemed to have been made, and the same ruling, until otherwise noted.

Mr. Katz: Thank you.

Q. (By Mr. Robnett): Do you understand the question?

A. Yes, sir. On November 8, 1945.

Q. Were you placed in full charge of that investigation, or were you only a helper?

A. I was in full charge of the determination of the [373] taxpayer's correct income.

Q. Were you in full charge of the work that was being done, or was to be done, in connection with the returns of Mr. Ormont for his income taxes for the years 1942, 1943 and 1944?

A. Yes, sir, I was in full charge of the audit.

Q. Who, if anyone, assisted you?

A. Well, for the most of the period I did not have any assistance in the audit. Mr. Phoebus was the Special Agent on the case. He functions differently on the case than I do in making the audit. My responsibility is primarily to make the audit and determine the taxpayer's correct income.

(Testimony of J. Bryant Eustice.)

Q. What were Mr. Phoebus' duties?

A. I believe he can best testify to that. I am not thoroughly familiar with the duties of a special agent of the Intelligence Unit.

Q. What, if anything, did he do in aiding you in your work?

A. At times, when we were making transcripts, I have asked him if he would copy some of the figures for me as a matter of saving time.

Q. Anything else?

A. I believe at times he may have copied some of the information from the records. I am not sure without reference to my work papers.

Q. When you refer to your work papers, that is Exhibit [374] 40, is it not? A. Yes, sir.

Q. That is what you used yesterday, and was part of that prepared by Mr. Phoebus?

A. I can only tell that by looking at it.

Q. Have you that before you?

A. No, I have not.

The Court: 40, Mr. Clerk.

Q. (By Mr. Robnett): Will you kindly examine Exhibit 40, and if you find any portion of that was prepared by Mr. Phoebus, will you so state?

A. Your request is for me to go through all of it?

Q. Yes.

A. The information, as I testified yesterday, as to the inventory of the U.S. Government bonds which the taxpayer had in his possession was given to me by Mr. Phoebus.

(Testimony of J. Bryant Eustice.)

Q. Before you pass that, did you ever check that information with any source? A. No.

Q. Other than just taking it as it was written by Mr. Phoebus? A. That is correct.

Q. Proceed.

A. Transcript of the capital account of Sam Ormont from [375] January 5, 1931 to March 31, 1943 was copied by Mr. Phoebus.

Mr. Strong: Your Honor, in order to shorten time, can we have the witness mark the pages with a pencil, or something, so we don't have to look it up later?

The Court: All right.

The Witness: Can I affix a paper? I can put them in there.

The Court: Here are slips of paper made specially for that purpose.

The Witness: Did I give the dates?

Q. (By Mr. Robnett): On the capital account you gave January 5, 1931 to March 31, 1943.

A. Sam Ormont's withdrawals from March 6, 1937 to March 31, 1943 copied by Mr. Phoebus. There is another capital account of Mr. Salter, which was copied by Mr. Phoebus, from January 5, 1931 to March 31, 1943. And withdrawals, Frank Salter, from March 6, 1937 to March 31, 1943; copy of trial balances for the years ending December 31, 1941, December 31, 1942, March 31, 1943. Commercial account of Sam Ormont, Security First National Bank, March 15, 1932 to December 8, 1934.

Q. 1934?

(Testimony of J. Bryant Eustice.)

A. 1934. The same account from January 8, 1940 to April 28, 1943. Transcript of savings account No. 747, Sam Ormont, Bank of America, Brooklyn and Soto, August 3, 1933 [376] to August 26, 1944. Sam Ormont's commercial account, First National Bank of Vernon, December 31, 1930 to April 18, 1931. That is all. [377]

Q. In making your computations of the income tax which you claim was due from Mr. Ormont for the years 1942, 1943 and 1944, did you make use of any of the documents or transcripts you have identified in your work sheet as having been made by Mr. Phoebus?

A. Yes, I used these transcripts I have here.

Q. Before using them did you check them or verify them with the originals from which they were supposed to have been taken?

A. You mean—I was present at the time that they were taken off there at the office. I didn't sit down and check each item. That was the purpose of having Mr. Phoebus transcribe them was to save time so that I could check the accuracy of the figures after in balancing the bank accounts.

Q. What did you check the accuracy with?

A. The beginning balance, plus the deposits as shown on these transcripts, less the checks that were written against the account. I also saw every one of these checks and I entered them personally one by one in this commercial account. I checked the deposits on this account in detail.

(Testimony of J. Bryant Eustice.)

Q. As against this transcript, you mean?

A. Yes, sir.

Q. And as to the other information—what account was that on, what Bank?

A. The commercial account of Sam Ormont at the Security-First National Bank.

The Court: Under the name of the Acme Meat Company?

The Witness: His personal bank account; Sam Ormont.

Q. (By Mr. Robnett): As to the other bank accounts you have testified to, is that in that work sheet, and which you say were copied by Mr. Phoebus, did you check any of those with the originals?

A. The same thing applies to these: I checked the withdrawals, that is, most of the withdrawals, the large withdrawals, all of the deposits and reconciled the bank accounts with the figures that were taken in the transcript.

Q. On all the other accounts?

A. On the accounts that were used in 1942, 1943 and 1944, and these other accounts that went back into—I would say as far back as we took them I reconciled the bank accounts.

Q. When you say you reconciled the bank accounts, what do you mean?

A. Well, took the beginning balance, added the deposits as shown on the transcript, deducted the checks that were shown on the transcript and reconciled that; that is, when you—I will start over and explain it over again.

(Testimony of J. Bryant Eustice.)

I start out with the beginning balance, add the deposits, deduct the checks, and that is the ending balance as shown on the bank statement. If there is any error that had been made, it will show up then. [379]

Q. Just a moment. You checked those, you say, against the original bank books?

A. Against the balances shown on the bank statement.

The Court: The totals? In other words, you checked your totals against their totals?

The Witness: Yes. In other words, in taking these transcripts from time to time we put in a balance, and also the beginning and ending balance on the transcript so that we can make that reconciliation.

Q. (By Mr. Robnett): And those balances that you put in in this transcript or that were in there were those balances likewise on the bank books, the original records?

A. They were on the bank records; that is where they came from, yes.

Q. I mean the balances themselves, were there as well as the items?

A. They are there every day on the ledger cards.

Q. I see. All right.

A. We have copies, I believe, of all those ledger cards here and that can be verified very shortly if necessary.

Q. Did you in your calculations of the income of Sam Ormont for the years 1942, 1943 and 1944 use

(Testimony of J. Bryant Eustice.)

the capital account of Sam Ormont that was copied in this work sheet that you have testified was copied by Mr. Phoebus? [380]

A. Yes, sir; I did.

Q. You used that?

The Court: Capital account? Where did that come from? From his books?

Mr. Robnett: I will ask the witness.

The Court: What do you mean by capital account?

The Witness: That shows the amount of capital he has invested in the business.

The Court: Where did you get that?

The Witness: From the books and records.

The Court: The books of the business?

The Witness: Yes, the books of the business.

Q. (By Mr. Robnett): Did you, before using that, check it with the books, check the copy that you have there with that work sheet?

A. Yes, I did. I had to trace a great many of those items. I had to check this transcript with the books and make entries on it. I did the detail on that. After Mr. Phoebus just copied it, that was all.

Q. What kind of entries did you have to make on it?

A. Where the money came from that was invested in this capital account, when the money was drawn out, what the money was used for.

Q. Now referring to your investigation, will you state every document, book or paper that you used in arriving at your [381] conclusions that you have given in evidence here.

(Testimony of J. Bryant Eustice.)

The Court: You mean to say that he had recourse to for information?

Mr. Robnett: Yes, your Honor.

The Court: Apparently the witness distinguishes between that and use.

Mr. Robnett: All right.

Q. Every one that you had recourse to.

A. I had recourse to all of these work papers, I would say.

Q. All of the ones of that Exhibit 40?

A. Yes, that is, in the examination, not—I didn't use all these figures in the computation of the taxpayer's income only from January 1, 1942 to December 31, 1944, but I used this information to verify the accuracy of the determination of his income and in preparing financial statements of the taxpayer, particularly at the beginning of 1942 so that I would know what sources of income the taxpayer had in his possession at the beginning of 1942.

Q. Now were there any other books or records that you used than the records that you have in Exhibit 40?

A. I do not understand the question.

Q. That you had access to in making up your report, other than what is shown in Exhibit 40.

Mr. Strong: Your Honor, that is confusing because there [382] are two reports here.

The Court: It will be less confusing at 2:00 o'clock, to which time we are adjourned.

Remember the admonition.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m. of the same date.) [383]

(Testimony of J. Bryant Eustice.)

Q. Did you make an examination of the deposits in the Acme Meat Company, or the payments to the Acme Meat Company by Mr. Ormont?

A. Do I understand the question, deposits to the Acme Meat Company?

Q. Payments to them, or deposits in their account by him.

A. Some of the deposits.

Q. Some of them only?

A. Yes, sir.

Q. You didn't examine all deposits then?

A. Not all deposits, no.

Q. Do you have a list of the particular deposits that you did examine?

A. Yes, sir, I have.

Q. In Exhibit 40?

A. Yes, they are in Exhibit 40.

Q. All that you did examine are in Exhibit 40?

A. I believe that is correct.

Q. Will you turn to that portion of Exhibit 40, where they are set forth? Have you them before you? [389]

A. Yes, sir, I have.

Q. As I understand from you, these do not represent all the deposits that may have been made to the Acme Meat Company by Sam Ormont, or all the payments made by Sam Ormont to the Acme Meat Company, but they do represent all that you copied, is that correct?

A. Yes, that's all that I copied.

Q. May I see them, please? [390]

Q. Just this one page that you have open, or is there more?

A. Well, these are these pages. These are just as I took them off at the time I made a more complete summary.

(Testimony of J. Bryant Eustice.)

Q. You say these pages here. There are four of them. The one preceding them is a yellow page and the one following them is a yellow page, is that correct? A. That is correct.

Q. They are not numbered, though, are they?

A. No, sir

Q. Have you totaled these items on these four pages which represent payments by Mr. Ormont to the Acme Meat Company?

A. These are not necessarily all payments of Sam Ormont to the Acme Meat Company. These are deposits that were made to the bank account of the Acme Meat Company in which there were certain items that represented credits, or credits were made to Sam Ormont's capital account in the Acme Meat Company.

Q. Well, certain items you did credit to him as capital account?

A. They were credited on the books and records of the Acme Meat Company to his capital account. Those were the items that I was interested in.

Q. What I am asking you, Mr. Eustice, is this, did you at any time make a statement, itemized statement, of the various [391] amounts that were paid into the Acme Meat Company by Mr. Ormont, that is, whether they were paid in as cash or whether they were deposited to the Acme Meat Company's account by Mr. Ormont individually.

A. Yes, I have a summary of that in each year.

Q. Did you make a summary of every item of that nature?

(Testimony of J. Bryant Eustice.)

A. That was money that was paid in by Mr. Ormont credited to his capital account or credited to a loans payable account.

Q. I don't care where they were credited, any and all moneys that he deposited for the account of the Acme Meat Company or paid to the Acme Meat Company.

A. Yes, sir.

Q. Have you the itemization of those amounts in Exhibit A?

A. In which exhibit?

Q. Pardon me, in Exhibit 40, the one you have before you, your work sheet.

A. Well, I show it in my analysis of the accounts here, which is the first part here.

Q. Does that itemize those items giving the dates and amounts?

A. Those items were taken from his capital account as shown on the books and records.

Q. All right. But you have an itemization of those, [392] have you, there?

A. Yes, they will show up in the transcript I have of his capital account.

Q. Do they show up in the paper you have before you now?

A. Are you speaking of any particular year, Mr. Robnett?

Q. I want all that you took.

A. Well, referring to the year 1942 Mr. Ormont deposited additional capital to Acme Meat Company of \$3800.

Q. What date?

A. I will have to refer to his bank account now.

(Testimony of J. Bryant Eustice.)

Q. All right. Whose bank account are you referring to?

A. Sam Ormont's. It was charged to his personal bank account at the Security-First National Bank on March 12, 1942.

Q. What date did you give in the other that you just stated, or did you give any date? You didn't, did you?

A. No, because I have summarized these items.

Q. Did the books show that that was the date that he made that contribution to the capital of the Acme Meat Company in the sum you testified to, \$3800, I believe, or are you merely saying that that is the date that there was a check drawn against his personal account for that amount?

A. No, we refer to his capital account and see where it was credited to his capital account from his account.

The Court: Where did the money come from?

The Witness: From his personal bank account.

The Court: Which one?

The Witness: His commercial account at the Security-First National Bank, Huntington Park.

The Court: What date?

The Witness: March 12, 1942.

The Court: Did you check the Acme Meat Company's bank books to see if that deposit was made?

The Witness: Well, I checked his records to see if that was where the credit was for that \$3800. I also had the check, I examined the check to see that the check was deposited to his personal bank

(Testimony of J. Bryant Eustice.)

account. Then the only part I was interested in was where it was credited on the books and records of the Acme Meat Company.

The Court: That is March 12, 1942?

The Witness: Yes, sir.

The Court: The bank ledger shows a deposit of \$7600 on that date.

The Witness: That is quite probable.

Mr. Strong: I submit you have the wrong account.

The Court: Acme Meat Company.

Mr. Strong: Which bank?

The Witness: That is quite probable. This \$3800 could be included in other deposits or other moneys that he deposited. [394]

The Court: All right.

Q. (By Mr. Robnett): Did you check the deposit slips of that day of the Acme Meat Company for that date?

A. No. I really had no purpose to do that.

Q. I say, did you? I am not asking you your purpose. A. No, I did not.

Q. You did not? A. No.

Q. You merely took their books, you didn't check the bank account at all?

A. That is correct. [395]

Q. Did you check that \$7600 item to find out of what it was composed, and where it came from, that his Honor just called to your attention?

A. The rest of the deposit? No, I had no interest in the rest of the deposit to check where it came from.

(Testimony of J. Bryant Eustice.)

Q. You had no interest whatever in the rest of it?

A. As long as it was properly recorded on his books and records. I mean I did not make and detailed audit of that deposit slip.

Q. Did you, in calculating the income of Sam Ormont for the year 1942, use, or have access to information pertaining to that \$7600?

A. I had access to that, yes, to all the information regarding that.

Q. You say you did not use any portion of it only the \$3800 in making your calculation?

A. Yes, and my interest there was to check the flow of the money out of Mr. Ormont's personal bank account, and also I was checking the flow of money from the business bank account of Mr. Ormont's personal bank accounts.

Q. Were there any other items that you found whereby Mr. Ormont had paid to the Acme Meat Company, any money at any time?

A. Yes, there were some of those I have taken into income. [396]

Q. I beg your pardon.

A. Some of those I have taken into income.

Q. I know, that is just what you have done. I want to find out about these items, where are they, and what are they?

A. Do you have any particular year?

Q. I want from the beginning to the end of the Acme Meat Company.

A. Well, the first one of those deposits was on May 21, 1943.

(Testimony of J. Bryant Eustice.)

Q. What was that item? What was the amount?

A. The amount of the deposit was \$1195.93.

Q. That was deposited to the Acme Meat Company, and paid by Mr. Ormont to the Acme Meat Company, is that correct?

The Court: When you say that was deposited, do you mean to say, Mr. Witness—do you mean to say that the books of the Acme Meat Company show that Sam Ormont paid that much money into the business, or do you mean to say that the bank records show the deposit of that sum—which?

The Witness: The books and records of the Acme Meat Company show a deposit on May 21, 1943 of \$1195.93.

The Court: You don't know what the bank record showed?

The Witness: I examined that deposit, yes.

The Court: Did it show that deposit?

The Witness: Yes.

Q. (By Mr. Robnett): You say this first one, that was in 1943. Didn't [397] you examine the Acme Meat Company's books of account from the time it became the Acme Meat Company?

A. I examined certain accounts in the books and records of the Acme Meat Company.

Q. What was the earliest item in those books that you examined? A. Well, the——

Q. Let me have the year first.

A. I would say I examined the capital account from 1931.

(Testimony of J. Bryant Eustice.)

Q. Was there not a set of books that related back to 1928? A. I didn't see those.

Q. 1931, starting there, were the only books you saw, were they?

A. 1931. I believe that was when the partnership of the Acme Meat Company was first established.

Mr. Robnett: I move to strike that out as the opinion of the witness.

The Court: It may be stricken out.

Mr. Robnett: I am just asking you as to the books, when they began, the ones that you examined.

A. I don't recall any books prior to 1931.

The Court: Those are the ones you examined, that began in 1931?

The Witness: Yes, your Honor. [398]

Q. (By Mr. Robnett): Did you take off from those books, starting with 1931, each and every item that was shown thereon as a contribution by Mr. Ormont to the Acme Meat Company, or a payment to it? A. That was shown in the——

Q. I say, did you take off any itemization of those?

A. Yes, as shown in the capital account.

Q. Have you a copy of that before you?

A. I have it here, yes.

Q. Does that show each and every contribution that he made to the Acme Meat Company?

A. There was also a loan account.

The Court: Does that first one show all of the contributions, or are you just looking at the one

(Testimony of J. Bryant Eustice.)

that does show all the contributions, except the loan account, or between that and the loan account does it show the contributions?

The Witness: Yes.

Q. (By Mr. Robnett): Have you the contribution to capital set up separately in Exhibit 40 for the entire period from 1931?

The Court: Do you mean whether they are designated as contributions of capital or loans? [399]

The Witness: Apparently there is some records of loans of capital account, or he himself has arbitrarily established two separate designations.

Mr. Robnett: I want him to give them, and have them segregated. I want to know which are loans, and which are capital accounts.

The Court: What you want to know is all the money Sam Ormont put into the business, whether capital or loans?

Mr. Robnett: Yes, but I would like them earmarked, as to whichever they may be.

The Court: All right. Do you mean to let this witness designate them?

Mr. Robnett: No.

The Court: Or how? He says they were on the books.

Mr. Robnett: How he says they were on the books.

A. Well, I have before me the transcript of Sam Ormont capital account. It shows his original investment, and then other contributions, credits to that account, credits of profits to the account as well as other amounts of capital.

(Testimony of J. Bryant Eustice.)

Q. That starts with the date of January 5, 1931, doesn't it? A. Yes, sir.

Q. How many pages is it, more than just one page?

A. It goes on to about two and a half pages.

Q. And that ends with the item dated 12/31/44, is that [400] correct? A. Yes, sir.

Q. The items below that are not any contributions to capital by him? A. These are 1945.

Q. I understand, but they are not contributions to capital?

A. They are not contributions to capital. [401]

Q. Now have you, without us reading all of those items or going into each item, the aggregate value of all those contributions to capital that you have just designated started with January 5, 1931 down to and ending with 12/31/44? A. No.

Q. You have no total of that at all?

A. No. I show them as whether they have gone into his personal bank accounts or whether they came out of his personal bank accounts in each of these years, but I didn't take a total of the contributions.

Q. Well, let's take, for instance, the year 1942. Will you state those items—there is about 12 or 15, I would say—I want now the dates and the amounts of contributions to capital during 1942 by Sam Ormont to the Acme Meat Company.

A. Well, in 1942 this item I gave you of March 29, 1942, to \$3800, which was transferred——

(Testimony of J. Bryant Eustice.)

Q. These are just contributions to the capital of the Acme Meat Company, aren't they?

A. Yes.

Q. From Sam Ormont?

A. From Sam Ormont.

Q. And that is all that I want. Just give the dates and the amounts.

A. You don't care where it is from?

Q. No. [402]

A. The other contributions for that year as credited in that year are the profits from the business.

Q. How much?

The Court: Do you want him to give the first item first?

Mr. Robnett: Oh yes, the first item.

The Court: The contributions before the profits?

Mr. Robnett: Pardon me. If I understand the witness correctly, he is giving the items of contribution whether they were direct payments by check or whether they were contributions by leaving profits in.

Q. Is that correct? A. Yes, sir.

Mr. Robnett: That is the way I understood his testimony, your Honor.

The Court: Is that your question?

Mr. Robnett: My question is, I want every contribution, no matter whether it was by cash or check or by leaving profits in.

The Witness: Well, there was \$3800 that we had discussed, which was a contribution; \$10 which

(Testimony of J. Bryant Eustice.)

was a credit or over-deposit; \$5200 which was credited as salary.

The Court: And not paid? That he didn't take out of the business?

The Witness: Yes, he had withdrawn that. It shows that [403] that is transferred from his drawing account.

The Court: If he took it out it wouldn't be a contribution then.

Mr. Robnett: Certainly not.

The Court: Well, I don't know.

Mr. Robnett: I don't know either, but I am asking the witness to give us the contributions.

The Witness: I am giving you the credits to his capital account.

The Court: And \$5200 was taken out of the business, the \$5200 was withdrawn by him as salary, isn't that right?

The Witness: Yes.

The Court: Or was it left in there?

The Witness: We might express it better this way, to say that there was profits during the year, that is, Sam Ormont's profits, of \$10,208.18, which was credited to his capital account. He had made withdrawals of \$5200, which was charged against that.

The Court: So that there was \$4800 or thereabouts that he left in as profits for that year?

The Witness: Well, he left \$5008.18 as profits and in addition deposited \$3800 from his personal bank account.

(Testimony of J. Bryant Eustice.)

The Court: You said a moment ago that his profits from the business were \$10,000 and some-odd.

The Witness: Yes. [404]

The Court: And he drew \$5200 of that out in salary?

The Witness: Yes, sir.

The Court: \$5200 from \$10,000 is \$4800, isn't it?

The Witness: \$10,200.

The Court: Oh, it was \$10,200?

The Witness: \$10,208.18.

The Court: So that it was \$5000, or whatever the figure was, that he left in the business to his capital account?

The Witness: That is correct.

The Court: And put \$3800 out of some other source, his private account?

The Witness: That is correct.

The Court: And \$10?

The Witness: Which was an adjustment.

The Court: Very well. That is all for 1942, is that right?

Q. (By Mr. Robnett): Were those the only contributions to capital by him in 1942?

A. Yes, that is correct.

Q. Now in 1943, will you give us all contributions by Mr. Ormont to capital of the Acme Meat Company?

The Court: By the way, did he start out the year 1942 with any credit on his capital account?

The Witness: He had a credit of \$9743.25

(Testimony of J. Bryant Eustice.)

The Court: Before adding these figures you have just given us?

The Witness: Yes, sir.

In 1943 on March 2 he made a \$2500 contribution to his bank account.

Q. (By Mr. Robnett): You mean to the Acme Meat Company account?

A. Acme Meat Company capital account.

Q. All right.

A. There was a credit, it was called earned salaries, of \$1300 to his capital account, and then he withdrew all of his capital—well, at that time he closed the bank account, the business bank account, at the Security-First National Bank and——

The Court: That was 1943?

The Witness: March 31, 1943.

The Court: That is about the time of the dissolution of the partnership with Salter?

The Witness: Yes, sir. And he opened a bank account with the Citizens National Bank there and I believe that was \$2400, and with the other assets he credited the capital account with \$3095.45 That becomes his opening capital account as of April 16, 1943.

On May 18, 1943 he deposited \$600 to his capital account. [406]

On May 21, 1943, \$200.

On May 25, 1943, \$2500.

On October 9, 1943, \$1900.

On December 31, 1943, the 1943 profit, \$11,525.22 was credited to his capital account.

(Testimony of J. Bryant Eustice.)

During this same period of time he had drawn \$6014.24 net which has been charged to his personal account.

That is made up of one item for \$6000, another item for \$14.24.

The personal account was closed into the capital account, charging the capital account for \$6014.24, leaving a balance of \$13,806.43.

Q. (By Mr. Robnett): Is that the total for '43?

A. That ends '43.

Q. I want to ask you about 1942. In your calculations of what you claim should have been and was his income for '42, I will ask you to examine any records you have there—I guess you have it before you in Exhibit 40, have you?

A. I have Exhibit 40.

Q. You have what you claim his income was in '42?

A. Yes.

Q. You have that before you, have you?

A. Yes, sir

Q. As I understand from you, you criticized his 1942 [407] return, and that is Exhibit—what exhibit is it? Do you have it before you? Is it No. 3?

The Court: I believe it is No. 1.

The Witness: I am looking at what is a continuation of this work paper here. In other words, it is a summary of that. It hasn't been identified as an exhibit.

The Court: I think No. 1 is Sam Ormont's 1942 return.

(Testimony of J. Bryant Eustice.)

Mr. Robnett: I believe so. Yes, this is the 1942 individual income return of Sam Ormont. It is Exhibit No. 1 in this case, or a photostat of it.

Q. Mr. Eustice, I will ask you to examine that and, taking the first item, that I understood from you yesterday that you criticized, and that was item No. 1, salaries, and other compensation for personal services, \$5200.

A. No criticism except that it was technically reported wrong. I had to change it as in my report as income from the business. The only item that it affected was in the computation of the tax. If it was left as salary he would be entitled to an earned income credit on that amount in excess of what he would otherwise be entitled to if it was reported as income from the partnership. And that was the reason for changing that item from item 1 and including it in item 10, not increasing the taxpayer's income any.

Q. So you say that he reported the \$5200 as an income but he reported it, according to your theory, incorrectly [408] because he said it was a salary and it should have gone under your opinion as income from the partnership.

A. That is correct.

Q. And by so doing you then took from him the credit he had asked for in his return and had credited of earned income credit of \$620.16, did you?

A. That is correct, and substituted \$300, I believe.

(Testimony of J. Bryant Eustice.)

Q. I beg your pardon?

A. And substituted \$300 instead of the figure that you mentioned.

The Court: Why \$300? If he wasn't entitled to any, he wasn't entitled to any.

The Witness: All income up to \$3000 was considered as earned income regardless of the source, and he had income in excess of \$3000 and therefore was entitled to 10 per cent of \$3000 of his income as earned income credit.

Q. (By Mr. Robnett): Therefore you took away from him \$320.16 of his credit that he had claimed on his income?

A. That he wasn't entitled to.

Q. That was resetting it the way you see it?

A. By the income tax law.

Mr. Robnett: I move to strike that out, if the Court please.

The Court: It may be stricken. The Court has to determine what the law is. [409]

The Witness: I am sorry, your Honor.

Q. (By Mr. Robnett): Mr. Eustice, have you before you, or with you, your calculations or recalculations, however you did it, of the 1942 income of Sam Ormont showing exactly how you calculated it; what income you based it upon; what credits you gave, or payments or deductions, or otherwise, and how you arrived at your final figure that you say should have been his income tax?

A. Do I have that before me?

Q. Do you have that all calculated out?

A. Yes, sir, I have that.

(Testimony of J. Bryant Eustice.)

Q. Let me see it, please.

The Court: When you shifted this \$5200 from salary over to partnership income, you increased his taxable income by the disallowance of \$320?

A. That is correct, your Honor, yes. Here are my adjustments: Dividends, interest, additional amount. Here is my estimation of those adjustments.

Mr. Strong: I can't hear a word. I don't know whether the jury can hear him or not.

A. I was explaining to him, here are my adjustments in the account, specifying the different items, and my explanation of this adjustment.

The Court: From your remark that you did not know [410] whether the jury could hear him or not, I understand from the jury that due to the lectern some of the jurors cannot see Mr. Himmelfarb and his counsel.

Mr. Katz: I pop up and down enough I thought they could.

The Court: I don't know how you can arrange that unless you slide around the table.

Mr. Katz: I can move another chair back here.

Mr. Strong: Maybe we can move the lectern back a little.

The Court: You have moved the table around a little, and the lectern back, and put a chair there. Now, are there any jurors who cannot see the defendants? The jurors over at the end; can you see them? All right. I don't know that it is important, but if the jury wants to see them, they are entitled to.

(Testimony of J. Bryant Eustice.)

Q. (By Mr Robnett): Now, during the entire year 1942, as the books reflect, the Acme Meat Company, there was a co-partnership, was there not, between Sam Ormont and Frank Salter?

A. Yes, sir.

Q. That is correct, isn't it?

A. That is correct.

Q. The entire year of 1942. Let me ask you when you took the sum of \$5200 that Mr. Ormont had claimed as a salary, and you disallowed it as a salary?

A. I did. [411]

Q. In your calculations you disallowed it as a salary?

A. That is correct.

Q. And you then put it down as part of his income from the partnership business, did you?

A. That is correct.

Q. Adding it to the sum that he had already reported from the partnership business, of \$5008.18?

A. That is correct.

Q. Now, I will ask you, Mr. Eustice, if it is not a fact that if that \$5200 was not allowable as a salary to Mr. Ormont, if it is not a fact that it was nothing but a withdrawal of part of his capital investment in the partnership?

A. In this case it had been withdrawn by him, yes. That was part of his capital.

Q. And did you distinguish it in your calculation from his capital investment?

A. Yes. At any time I used that figure I took into account the \$5200 that he had withdrawn from the business.

(Testimony of J. Bryant Eustice.)

Q. That was not income to him at all then, was it? He was just getting back the \$5200, of his capital, the way you calculated by putting it down as a withdrawal from the partnership rather than a salary, isn't that true?

A. Are you referring to the way it is reported?

Q. I am referring to the \$5200 as you calculated it. You disallowed it as a salary, didn't you? [412]

A. Yes, and considered it——

The Court: If it was salary, it was taxable income?

The Witness: If it was salary, it was taxable income but——

The Court: That is all I want to know.

Q. (By Mr. Robnett): If it was a withdrawal of his capital investment, it was not a taxable income, was it?

A. When he withdrew it from his business it was not taxable to him, no.

Q. It was not taxable then in 1942 as income, was it?

A. It was includible in his income from the business.

Q. Either it is or it not income.

The Court: Taxable income.

Q. (By Mr. Robnett): Taxable income. Now, he had a capital investment there of a great deal more than the \$5200, didn't he? A. Yes.

Q. Of money he put into that business?

A. Well, it was——

The Court: Just answer the question.

(Testimony of J. Bryant Eustice.)

The Witness: I don't understand the question.

The Court: Read the question.

(Question read by the reporter.)

A. He had more money in the business than that, yes.

Q. (By Mr. Robnett): And he simply received, according to you, he received [413] back a part of the money he had put into the business?

A. Yes, he received back a part of the money put into the business.

Q. It should not have been calculated by you as part of his income for 1942, should it?

A. Well, he withdrew——

The Court: No, answer that yes or no. Then you can explain it.

A. Yes, it should have been included in income by me.

Q. (By Mr. Robnett): What?

A. The \$5200.

Q. Do you mean to say if a man has certain money over in this pocket, and puts it over in the other pocket, that you are going to charge it as income on that money simply because he transferred it from one place to another?

A. No, sir, when he drew money out of the business it was not taxable to him as income, but it was, as he set it up, it was a part of his distributable share of the income. His method of reporting it was simply to divide the total of ten thousand some odd dollars he received, and report it in two items.

(Testimony of J. Bryant Eustice.)

But he actually did have a profit of ten thousand and whatever that amount is on the schedule—ten thousand two hundred and some odd dollars. He actually had that profit there, yes, and it was properly reportable as income. [414] In other words, on the income tax return it is Item 1 and Item 10. I put it all down under Item 10.

The Court: You disallowed it as income when you took it out of the salary, didn't you?

The Witness: Just the name.

The Court: You said it did not belong to salary, but credited it to his capital account?

The Witness: As income from the business.

The Court: Where you finally put it was back into the capital account?

The Witness: That is correct. It all goes into his capital account finally, the profit from the business.

Q. (By Mr. Robnett): I will ask you if you can quickly calculate this tax for 1942, leaving out the \$5200 that you have heretofore put in there, that you now say was capital; just leave that off, and calculate how much would have been his income if you forget the \$5200 as being income.

Q. Just leave off the \$5200, and take the figures calculation?

Q. Yes; it is very important.

A. His corrected amount of net income less \$5200?

Q. Just leave off the \$5200, and take the figures that you had figured.

(Testimony of J. Bryant Eustice.)

The Court: Taking them off or leaving them on?

Mr Robnett: I want him to figure both ways.

The Court: Which way now? In other words, take the total, and deduct the \$5200?

Mr. Robnett: Yes, that's right, take his own figures as he has them.

A. I haven't a surtax schedule. I have one in my briefcase. Can I get it?

Q. Oh, yes. A. Yes, sir.

Q. Have you figured it? All right, what have you on there as his income, gross income?

A. I beg your pardon?

Q. In that calculation what have you used as his gross income?

A. I used his net income; not his gross income.

Q. What is it?

A. The first for the corrected income, \$14,323.42, less \$5200, which Mr. Robnett asked me to deduct, left a net income of \$9223.42. [416]

Q. Now what do you figure from that and have figured on that as to what his income tax would figure on that basis, or would have figured?

A. \$1929.96.

Q. Your figures are all on this piece of paper?

A. Yes.

The Court: \$1929.26?

The Witness: Yes, sir. Of course that hasn't been checked by anybody.

Mr. Robnett: That is close enough. I offer that in evidence, if the Court please.

The Clerk: M.

(Testimony of J. Bryant Eustice.)

(The document referred to was received in evidence and marked Defendants' Exhibit M.)

Mr. Strong: May I look at that, your Honor, for a moment?

(The document referred to was passed to counsel.)

Q. (By Mr. Robnett): And, Mr Eustice, the amount of tax paid by Mr. Ormont on his 1942 income was \$2,477.91, was it not?

The Court: You have your summary there.

The Witness: Yes. The tax that he shows there is \$2,477.91.

Q. (By Mr. Robnett): Which is approximately \$500 more than the calculation [417] on exhibit—what is the exhibit?

The Clerk: M.

Q. (By Mr. Robnett): Exhibit M, is it not?

A. That is correct.

Q. Now without taking the time to figure it, but taking Exhibit 1 before you, which is his income tax report and in which he reported the \$5200 as salary, now if you take that off of that report that he filed there and you use just the other items that he used——

The Court: That he used?

Mr. Robnett: Yes, that he used on that report——

Q. I ask you if it isn't a fact that his tax would not have been one-half of the amount that he did actually pay.

A. It wouldn't be over one-half, no.

(Testimony of J. Bryant Eustice.)

Q. It wouldn't have been over one-half of the amount he actually paid, would it?

A. No, not if he deducted \$5200 from the return as it is.

Q. All right. Now let's take up the items that you claim are income or were income of Mr. Ormont in 1942. You testified yesterday about various amounts and figures. I am going to ask you about one particular figure. You mentioned yesterday that Mr. Ormont, during the year 1942, received from Sam and Ben Borne the sum of \$10,000, didn't you? [418]

A. Yes, sir.

Q. That was a repayment of a loan or a part of a repayment of a loan, was it not?

A. Yes, that is a repayment of the loan.

Q. That was not income then, was it, that was taxable?

A. That was not taxable income.

Q. You also mentioned yesterday a sum of \$200 which he received from Nolan Allen in 1942, and that was a repayment of a loan, wasn't it?

A. That is correct.

Q. That was not taxable as income?

A. That is correct.

Q. You mentioned an item of \$135—I will withdraw that.

Where did you get that item of \$200 paid back by Nolan Allen in 1942?

A. From an analysis of his bank accounts or from the bank deposits.

(Testimony of J. Bryant Eustice.)

Q. Bank deposits.

A. Examination of the bank deposit slips to his personal account.

Q. How did you trace it to know that that was from that person?

A. I talked to Mr. Allen.

Q. You talked to Mr. Allen? [419]

A. That is correct.

Q. That is all you knew about when he paid it back, isn't it, was what he told you, Mr. Allen told you?

A. The deposit slip or the check on the deposit slip indicated that it was a check drawn by Mr. Allen on his personal bank account.

Q. How could you tell that the deposit slip shows that it was a check drawn on Mr. Allen's account? Will you get the deposit slip that you got that from?

The Court: Do you have the exhibit there? He means the deposit slips. I don't know where they are.

The Witness: Bank of America.

The Court: What date?

The Witness: It is a 1942 deposit slip, Bank of America, No. 747.

The Clerk: Exhibit 37.

(The document referred to was passed to the witness.)

Q. (By Mr. Robnett): Have you the deposit slip before you from which you concluded that Mr. Allen had paid \$200 in 1942 to Mr. Ormont?

(Testimony of J. Bryant Eustice.)

A. I have the deposit slips, yes, sir, in front of me.

Q. They are in exhibit what, 37?

A. Yes, sir.

Q. All right. Will you show me which one—there are several deposit slips there—which deposit slip you mentioned [420] that that \$200 is on?

A. On February 4, 1942.

The Court: Just refer to the deposit slip.

Q. (By Mr. Robnett): It is the top deposit slip on that exhibit. A. Yes.

Q. Which item did you use?

A. These two items.

Q. The first two items?

A. The first two items.

Q. Each of those items are for \$100 apiece, aren't they? A. That is correct; yes.

Q. On that deposit slip? A. Yes.

Q. And each of the items have no identification mark excepting the 16-80 on each of them showing the clearing house number of the bank that the check is drawn on, isn't that correct?

A. That is correct.

Q. That is all that shows, isn't it?

A. That is correct.

Q. And from that you concluded and testified that Mr. Allen paid Mr. Ormont \$200 in 1942, didn't you?

A. No, sir, not just from that information.

Q. That includes what you say Mr. Allen told you? [421]

A. I also discussed this item with the taxpayer.

(Testimony of J. Bryant Eustice.)

Q. Yes. You didn't see a \$200 single item on that deposit slip, did you?

A. What I was tracing to begin with was where the two \$100 checks came from.

The Court: No, he said did you see a \$200 item on the deposit slip.

The Witness: No, there is two \$100 items.

Q. (By Mr. Robnett): In fact there are five \$100 items?

A. Yes. Two are drawn on 16-80.

Q. That is the only way that you arrived at the conclusion or the assumption that that was Allen's payment, isn't it?

A. I told you that I had also talked with Mr. Allen.

Q. I see. In the presence of Mr. Ormont?

A. In the presence of Mr. Phoebus.

Q. You never talked to Mr. Allen in the presence of Mr. Ormont, did you? A. No, sir.

Q. If then it should develop—and I may tell you that it will—that Allen's account was settled and paid in full on May 7, 1941, it would make a difference in your testimony as to that item of \$200, wouldn't it?

Mr. Strong: That is speculative, your Honor. I object. [422]

The Court: Objection overruled. The witness can answer the question.

The Witness: If it is proven otherwise, I would have no choice in the matter.

(Testimony of J. Bryant Eustice.)

The Court: No, that isn't the question, if it was proven otherwise. Counsel has asked you if it develops and that were the fact that it was '41 and not '42 it would reduce that income by \$200.

The Witness: By this computation it would, yes.

Mr. Robnett: All right.

Would you like to see this, counsel?

(Exhibiting document to counsel.)

The Court: Did Mr. Allen produce the canceled checks for you to see?

The Witness: I was looking, your Honor, for information I have here on it in my work papers.

Mr. Robnett: I would like to have this marked as an exhibit for identification.

The Clerk: N.

(The document referred to was marked Defendant's Exhibit N for identification.)

Q. (By Mr. Robnett): Mr. Eustice, I am going to show you a letter and ask you to read it to yourself, please. It is Exhibit N for identification. You have read that, have you? [423]

A. Yes, sir.

Q. Very well.

Now I want to offer this in evidence. Counsel objects on the ground that there is no foundation. I will let him state his objection.

Mr. Strong: Yes. I don't know anything about that letter.

Mr. Robnett: Then I ask the privilege at this time of withdrawing the witness and putting another witness on to identify this letter.

(Testimony of J. Bryant Eustice.)

The Court: To establish the foundation so that you can continue with your cross-examination?

Mr. Robnett: Yes.

The Court: Step down, Mr. Eustice.

(Witness temporarily excused.)

Mr. Robnett: Mr. Kosdon, will you take the stand.

BENJAMIN F. KOSDON

called as a witness by and in behalf of the defendant Ormont, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name?

The Witness: Benjamin F. Kosdon, K-o-s-d-o-n.

The Clerk: Take the stand.

Direct Examination

By Mr. Robnett:

Q. Mr. Kosdon, what is your profession? [424]

A. I am an attorney at law.

Q. And have you been such for some time?

A. Yes, sir.

Q. Licensed to practice in the State of California and practicing in the State of California?

A. Yes, sir.

Q. Were you such in the year 1941?

A. Yes, sir.

Q. Acquainted with Sam Ormont?

A. Yes, sir.

(Testimony of Benjamin F. Kosdon.)

Q. Did you represent Mr. Ormont in a matter as to a collection of a judgment against Mr. Nolan?

A. Allen you mean.

Q. Allen, I should say. A. Yes, I did.

Q. It is Nolan Allen, isn't it?

A. That is correct.

Q. And did you during that time collect a sum of money as a settlement of the entire balance of Mr. Allen's indebtedness to Mr. Ormont?

A. Yes, I did.

Q. And do you have before you Exhibit H?

A. No.

Q. Exhibit N I should say. [425]

A. Yes, I do.

Q. Is that the letter from Mr. Allen's attorney to you with the enclosure of the remittance in full settlement of that account?

A. That is correct.

Q. You received that and the remittance therein referred to, did you? A. I did.

The Court: On or about that date?

The Witness: On or about the date set forth in the letter.

Q. (By Mr. Robnett): What is the date?

A. May 7, 1941, and my file shows May 13, 1941, I was paid my fee.

The Court: Who is the letter from?

The Witness: It is from Hanna & Morton, lawyers in Los Angeles.

The Court: Was there a lawsuit?

The Witness: There was, your Honor.

(Testimony of Benjamin F Kosdon.)

The Court: Were Hanna & Morton the attorneys of record for Allen in that case?

A. I believe they settled before they became attorneys of record.

The Court: They represented Allen in their negotiations [426] with you?

The Witness: Yes, your Honor.

The Court: All right. Cross-examine.

Cross-Examination

By Mr. Strong:

Q. What has this to do with the \$200 we were discussing here through this witness?

A. Are you asking me?

Mr. Robnett: I object to this as not proper cross-examination.

Mr. Strong: I don't know what this has to do with the \$200. There is no connection between that and the settlement of the \$200 whatsoever.

The Court: That is for the jury to decide.

Q. (By Mr. Strong): Does that have anything to do with the \$200?

A. It sets forth I received the money and turned it over on or about May, or some time in May, 1941.

Q. What money?

A. That was received from Nolan Allen.

Q. As to what? A. As to what?

Q. As to what, yes.

A. As to any moneys that I received from Nolan Allen.

Q. What relation did that have with the \$200 testified [427] to by the witness?

(Testimony of Benjamin F. Kosdon.)

The Court: Was there a question from the jury? Did you want to ask a question?

A Juror: I would like to ask him——

The Court: You had better wait. We will get to you. We will wait until the lawyers get through asking all the questions they want.

How much money was it?

The Witness: \$325.

The Court: That was the money owing by Nolan Allen to Sam Ormont?

The Witness: That was an agreed amount that was accepted.

The Court: An agreed amount that was accepted?

The Witness: Yes, your Honor.

Q. (By Mr. Strong): Does that amount include the \$200 testified to by the witness Eustice on cross-examination? A. I wouldn't know.

The Court: It couldn't include that because that was a year later, if it was a year later.

Mr. Strong: Then what did it have to do with the \$200, your Honor? This is all with reference to the \$200 that Mr. Eustice is testifying about.

The Court: Counsel has stated that his position is that [428] the \$200 was paid a year before Mr. Eustice secured the information from Ormont. He said Allen told him he paid it in '42.

Mr. Strong: Yes.

The Court: And if you must spell it out, this evidence is offered for the purpose of showing that it was paid in 1941.

(Testimony of Benjamin F Kosdon.)

Mr. Strong: Except that this witness says it has nothing to do with that \$200.

The Court: No, he didn't say that.

Q. (By Mr. Strong): Does this have anything to do with the \$200?

A I said I wouldn't know.

Mr. Strong: He doesn't know. There is no evidence that it has anything to do with it. I object to it.

Mr. Robnett: You have no further questions?

Mr. Strong: No.

Mr. Robnett: You may step down, Mr. Kosdon, and I now offer in evidence Exhibit N.

Mr. Strong: Objected to on the grounds stated. that there is no connection between the two transactions whatever.

The Court: The objection is overruled. It is admitted in evidence.

(The document referred to was received in evidence and marked Defendant's Exhibit N.)

(Witness excused.) [429]

The Court: This is an appropriate time for a recess.

Remember the admonition.

(Short recess.) [430]

J. BRYANT EUSTICE

a witness recalled by and on behalf of the plaintiff, having been previously duly sworn, resumed the stand and testified as follows:

Cross-Examination

(Continued)

By Mr. Robnett:

Q. Mr. Eustice, I am going to return to you your Exhibit No. 40, and call your attention particularly to the page where it is open, which is namely, the last page, and I will call your attention to this portion of it showing payments by Nolan Allen. According to the report you have a memorandum on it, haven't you? A Yes, sir.

Q. And you show, do you not, the last payment on that account was 1941, the sum of \$525?

A. Yes, sir.

Q. You did have another item on there, 1942, \$200, which you have scratched off, didn't you?

A. That is correct, yes, sir.

Q. Therefore, according to your own record, is it not true that there was no payment by Mr. Nolan Allen to Mr. Sam Ormont in 1942?

A. It is possible that he never made any payment in 1942, to him, although the checks were on the same bank account as the previous payment had been. It wasn't detrimental to [431] the taxpayer to consider it——

Mr. Robnett: I move to strike out the statement of counsel.

The Court: It may be stricken.

(Testimony of J. Bryant Eustice.)

Mr. Strong: I did not say anything.

Mr. Robnett: I move to strike the answer as not responsive.

The Court: It is not responsive, instead of the statement of counsel.

Q. (By Mr. Robnett): I ask you to please answer it yes or no: Is it not a fact that, according to your own record, Exhibit 40, being your work sheets, and the very documents which you considered in testifying yesterday, and in making up your returns, or your calculations as to Sam Ormont's income tax for 1942, that there was no payment by Nolan Allen to Sam Ormont of any sum whatsoever in 1942, according to your own work sheets?

A. This is a record of the payments on that note, Mr. Robnett. I cannot say that Mr. Allen did not pay Mr. Ormont \$200 in 1942. The payment came from the same bank account as these other payments, in 1942, and then they quit. He had been getting a series of payments.

The Court: Do you mean you don't know whether he got \$200 in 1942, or not—is that right?

The Witness: No, he got \$200 in 1942 from the same bank [432] account.

Q. From the same bank?

A. The same bank?

Q. The same bank? A. Yes.

Q. What is 16-30—what bank is that, Bank of America?

A. I can't tell, but I can by looking in my briefcase.

(Testimony of J. Bryant Eustice.)

The Court: Just take the briefcase up here, and then you may have it the next time. What bank is that?

A. That is Bank of America, Wilshire and Western.

Q. You don't mean just because checks came from that bank that you deduced that they were from Nolan Allen?

A. I talked to Nolan Allen, your Honor. He had been making a series of payments for some time on these notes, and this was the only \$200 one, this \$200 drawn on the same bank, and then it quit at that time. He did not have his cancelled checks available.

Q. Do you mean in Mr. Ormont's account that was the only money that went through that account, that is, on that bank?

A. Around that time, to the best of my recollection. I don't recall of any other checks.

Q. (By Mr. Robnett): Isn't it a fact, looking at your Exhibit 40, on the page I showed you, that you have scratched off the item you had on there for 1942, as indicating it was incorrect? [433]

A. That I had no record of that, but in just talking with Mr. Allen.

Q. It was after you talked to him. Still you have it scratched off? A. That is correct.

Q. Why did you scratch it off?

A. Because he did not have a record of it.

Q. Why then did you mention it in your testimony yesterday, and testify to this effect, on page

(Testimony of J. Bryant Eustice.)

284; I will read it to you; look at lines 8, 9 and 10 on page 284 of the transcript of yesterday's testimony by you. A. Yes, sir.

Q. You gave that testimony to this effect, did you not? A. That is correct.

Q. (Reading.) "He received payment of a loan that he had previously made to Nolan Allen, of \$200.00." You do so testified yesterday, did you not? A. That is correct.

Q. Then why did you testify to that when you said that Mr. Allen was the only one who had told you, and that you had finally scratched it off on your own Exhibit 40, the work sheets?

A. As the item, by showing it as a loan, from Nolan Allen, was not detrimental to the taxpayer, I did not go into that as carefully as an item I would be taking into income. [434]

The Court: You added it to income not reported.

The Witness: No, your Honor. I did not add it to income, if it did not come from Nolan Allen. It may have been income. I did not take it into account. It certainly did not increase the taxpayer's income in my computation.

Q. It had nothing to do with your computation whatsoever, then?

A. I did not take the item into income, no, sir.

Q. Answer my question: Did that sum of \$200 have anything whatsoever to do with your computation of the income tax of Mr. Ormont?

A. I don't know how to answer it other than the way I did. I tried to explain it specifically.

(Testimony of J. Bryant Eustice.)

Q. Did it have anything to do with your computation, one way or the other?

A. Yes, it did, one way or the other.

Q. And yet, when you testified you knew, did you not, that you had scratched that item off on your work sheet?

A. No, I didn't refer to my notes when I testified to that. I referred to this sheet I have before me right now.

Q. All right. I am going to ask you: Would you testify today the same as you testified yesterday, namely: He received payment of a loan that he had previously made to Nolan Allen of \$200, which, to connect it, your testimony was as of 1942. Would you testify now that Mr. Ormont received \$200 from [435] Nolan Allen in 1942?

A. I would testify that he may have received \$200.

Q. We are trying this man's liberty. You know that, don't you? A. Yes, sir.

Q. That is at stake. It isn't a question of maybe, or may. He has a right to be tried upon facts, and that's all you swore you would testify to—facts.

A. That is correct, to the best of my knowledge.

Q. Will you swear today that Mr. Ormont received the sum of \$200 from Nolan Allen in 1942?

A. No, I wouldn't swear he received \$200 from Nolan Allen in 1942. [436]

Q. Now you also mentioned yesterday the item of \$10,000 which you say was received by Mr. Or-

(Testimony of J. Bryant Eustice.)

mont in 1942 from Sam and Ben Borne in repayment of a loan.

A. Yes, sir.

Q. You testified about that yesterday, didn't you?

A. Yes, sir.

Q. You have testified today that that was not taxable income, haven't you?

A. That is correct.

Q. Why then did you use it in making up your calculations of Mr. Ormont's 1942 taxes?

Mr. Strong: I object, your Honor. There is no evidence that he used it.

Mr. Robnett: I will ask him.

Q. Did you use that in any of your calculations?

A. Not in calculating his income. The only place I used it was accounting for his funds, the tracing of his funds before taking any of these items into income.

The Court: In other words, you didn't charge that to him as income?

The Witness: No, your Honor; quite the opposite.

Q. (By Mr. Robnett): Now you say that in 1942 Mr. Ormont deposited \$990 to his personal bank account. You testified to that yesterday, didn't you? [437]

A. Yes, that is correct.

Q. Did you use that as income for his 1942 income?

A. No, sir, I did not.

Q. Why did you mention the \$990 to the jury then?

A. I was accounting for all of the funds that did not represent income.

(Testimony of J. Bryant Eustice.)

Q. That did not? A. That is correct.

Q. Then you were testifying as to all that did not represent income, were you?

A. To the best of my knowledge that these funds did not represent income.

Q. How could you tell whether that \$990 deposited to his personal account did not represent income?

A. I examined the record of payments at the office of the United Dressed Beef Company where Sam and Ben Borne are located, have their accounts, and I determined the amount of payments that they were making to Mr. Ormont and similarly the check that they were drawn on, and I traced those checks as deposited into his personal bank account, and the ones that I could account for amounted to \$990. I would say that is four payments of \$225 each. The others were not deposited so I could only assume that they were cashed.

Q. Then what you meant to say then in regard to that \$990, or what you mean now to say, is that those were checks from the United Dressed Beef?

A. From Sam and Ben Borne.

Q. From Sam and Ben Borne? A. Yes.

Q. You testified yesterday that Mr. Ormont received interest checks from Sam and Ben Borne for \$12,090.75. A. \$12,099.75.

Q. Well, the reporter has it \$12,090.75, but you say \$12,099.75? A. That is correct.

(Testimony of J. Bryant Eustice.)

Q. Immediately following that is when you stated he deposited \$990 to his personal bank accounts. You mean that that \$990 was a part of the \$12,099.75? A. (Pause.)

Q. I will show you your testimony so we can get it straight.

A. (Examining transcript.)

Q. Was that what you meant by that \$990?

A. Received interest checks from Sam and Ben Borne for \$12,099.75. Yes, sir.

Q. And the next statement that followed as to him depositing \$990 was from that \$12,099.75, that is what you meant, was it?

A. That is correct; yes, sir.

Q. Well, now, how do you trace the \$990 that you say was by checks? [439]

A. That was by checks; yes.

The Court: In addition to the \$12,099.75?

The Witness: Yes. That was the total figure, \$12,099.75. I traced \$990 of that as going into the taxpayer's personal bank accounts; \$309.75 I didn't.

The Court: \$309.75——

The Witness: Was not deposited.

The Court: Was not deposited?

The Witness: That I could not trace.

The Court: So you did not charge him with the \$990?

The Witness: No, he was not charged with that. I am accounting for the funds that did not represent income in this case.

(Testimony of J. Bryant Eustice.)

The Court: So the interest, all of it was income, was it, \$12,099.75?

The Witness: I said additional income.

The Court: It is all additional income, isn't it?

The Witness: I believe, your Honor, there are some—that is the figure he reported, \$12,099.75 on his income tax return. It has already been reported as income, therefore I would not take it into account as additional income.

The Court: Except you did say that you took into account as additional income the difference between \$990 and \$12,099? Did I understand you correctly?

The Witness: No, sir, I did not take any part of this [440] into income. What I was doing at this operation, the taxpayer had deposited the difference between \$38,535.34 and \$13,038.44 to his personal bank accounts during the year 1942. From his deposit slips I was tracing the items that did not represent income to the taxpayer, or additional income, before I took into account the other checks and cash as representing income that was not explained by the taxpayer.

The Court: What about the difference between \$990 and \$12,099?

The Witness: The \$990 went into his bank account, therefore I did not consider that as additional income.

The Court: But you did consider the difference as additional income?

The Witness: No part of it; no.

(Testimony of J. Bryant Eustice.)

The Court: No part of it?

The Witness: No.

The Court: No part of that \$12,099?

The Witness: No, not as additional income. It had already been reported on his return.

The Court: I misunderstood you then.

Proceed, counsel.

Q. (By Mr. Robnett): You have made the remark just now that items were not explained by the taxpayer, or words to that effect.

A. That is correct; yes. [441]

Q. Did you ever talk to Sam Ormont about his income for any year at all?

A. Yes, sir, for all three years.

Q. When did you ever talk with him?

A. Oh, I believe November 27, 1945, in the office of the Acme Meat Company in the presence of Mr. Phoebus and Mr. Mailin, his accountant at that time.

Q. December what?

A. November 27, 1945.

Q. Had you previously obtained the data that you have in Exhibit 40 or any part of it?

A. Yes, a great deal of it. I had the analysis of his bank accounts and of these certain items that wasn't explained, or asked the taxpayer if he could explain them, or his accountant could explain them, and gave him that opportunity.

Q. Let me ask you this: How long have you been with the Internal Revenue Department?

A. For seven years.

(Testimony of J. Bryant Eustice.)

Q. How many? A. Seven years.

Q. That has been here in Los Angeles?

A. In Los Angeles all the time; yes, sir.

Q. And what particular official position do you hold? A. Internal Revenue Agent. [442]

Q. Is there anyone superior in authority to you in this office? A. Yes, there is.

Q. I beg your pardon?

A. Yes, there are several who are.

Q. There are more than one?

A. Yes. I work directly under a group chief.

The Court: There is an agent in charge?

The Witness: And then there is the Internal Revenue Agent in charge who is over the whole office; yes, sir.

The Court: In other words, the hierarchy of the Internal Revenue Bureau begins with a deputy collector, is that right? That is the lowest, isn't that right?

The Witness: Well, I hate to say lowest.

The Court: He gets the first opportunity at the taxpayer?

The Witness: Certain taxpayers he audits.

The Court: Then above that is the Internal Revenue Agents who are auditors?

The Witness: They audit taxpayers over a certain amount of gross income or net income.

The Court: Who are really auditors?

The Witness: That is correct.

The Court: That is your function, to audit returns?

The Witness: Yes, sir. [443]

(Testimony of J. Bryant Eustice.)

The Court: Then there is an agent in charge of the agents?

The Witness: Yes, your Honor.

The Court: And he divides you up into groups and puts an agent in charge of each group of agents?

The Witness: Yes, sir.

The Court: Then over and above that and fewer in number are the special agents?

The Witness: They are in a different department.

The Court: They are in a different department working under a special chief in Washington, and their function is to investigate any supposed criminality?

The Witness: That is correct, your Honor.

The Court: All right.

Q. (By Mr. Robnett): Let me ask you of the custom, if they have a custom in your office, with regard to checking or auditing and investigating income tax reports. Do you have any particular rule or regulation as to how those are to be done?

A. We have certain rules and procedures of things that we should do and should not do.

Q. Are those written rules, printed rules?

A. Well, some of them are, yes. Some are developed by custom.

Q. There are such rules? [444] A. Yes.

Q. Do you have a set of those?

A. No, I have not.

Q. Do you have them available?

(Testimony of J. Bryant Eustice.)

A. They are available in the library of the Internal Revenue Agent in charge.

Q. I mean, are they available to you?

A. Yes, any instructions are available to me.

Q. In fact, that is one of the things you have to follow, or are supposed to follow, is it not, are those rules?

A. You are referring to special procedure in making audits? Well, a great deal of that is in the discretion of the agent as to how far he should go in making an investigation or an audit, whether he should make a detailed audit or just a cursory audit.

Q. I am particularly interested in any rules that you may have there as to just when, what conditions, you investigate the taxpayer's returns.

A. My first authority on that is the returns of the taxpayers which are presented to me for making an audit.

Q. You take those then and audit them from what appears therein, do you? A. Yes.

Q. And do you then go, if they are not to your satisfaction, you go and see the taxpayer? [445]

A. Well, when the returns are given to me they are given to me for audit and then I go to the taxpayer, that is correct.

Q. That was done in this instance, it was given to you to audit Mr. Ormont's returns?

A. That is correct.

Q. And you did so?

A. That is correct.

(Testimony of J. Bryant Eustice.)

Q. Now when you audited a return of a taxpayer, if you find that his return is not correct on its face, and according to your auditing at least that there are additional taxes due, what do you then do?

A. Well, if the return is in my possession for audit and he is in business, I go out and ask him if he will let me see his books and records. I introduce myself, tell him that I have his income tax returns for such and such years, and I would like to make an audit of his books and records for those years.

Q. And do you ever, before you may see the taxpayer, do you ever send them a statement of additional tax due to give them an opportunity to pay it?

A. Not in connection with my work, no. My returns that come to me is for audit.

Q. Do you know whether or not any department that handles that return before it comes to you to audit have a rule [446] that that is what they do if they find that there are any additional taxes due?

A. I couldn't—

Mr. Strong: Your Honor, this is immaterial.

The Witness: I couldn't testify to other procedures.

Mr. Strong: Just a minute.

The Court: This is preliminary, isn't it, Mr. Robnett?

Mr. Robnett: Yes, it is, your Honor.

The Witness: I wouldn't attempt to testify to the other procedures of the office. I may be wrong.

(Testimony of J. Bryant Eustice.)

The Court: By the way, the agents have authority only to audit. You have no authority to go and collect or settle? That must all run through the Collector?

The Witness: That is correct. We cannot collect taxes or settle the case without review by our office.

The Court: When you finish with your audit do you send it to your head agent and then if it is finally approved somebody else bills the taxpayer?

The Witness: It has to be reviewed and the computations checked and then it goes to the typing department.

The Court: And finally it gets back to the Collector who sends a bill?

The Witness: Who sends a bill. We have nothing to do with the collection of taxes. [447]

Q. (By Mr. Robnett): But after you have finished it and after it has gone through all this other process that you have testified to, if it then is found that there is in their opinion a further tax due they send the taxpayer a bill, is that your understanding?

A. Yes, after they are satisfied that the report is correct he eventually gets a bill.

Q. And in that bill they tell him wherein he is deficient in his payment, do they not?

The Court: Do you know?

The Witness: You mean a copy——

The Court: Do you know?

(Testimony of J. Bryant Eustice.)

The Witness: I don't know as to what they do in every case; no. [448]

Q. (By Mr. Robnett): Do you know whether or not, when they send him a bill, if he pays the amount they send the bill for, whether or not the matter is then closed?

Mr. Strong: Isn't this getting far afield? It is all preliminary, but we haven't gotten to the things it is preliminary to, as yet.

The Court: Objection overruled. Do you know that?

The Witness: No, your Honor. This is getting out of my field altogether. My work is auditing, examining, not collecting. I am not familiar with any of the bills.

Q. (By Mr. Robnett): In this case, this 1942 report of Sam Ormont, that was handed to you for auditing, was it? A. Yes, sir.

Q. Do you know when that was handed to you for auditing?

A. I couldn't fix the date exactly, no. I started the audit on November 8, 1945. It was some time prior to that date.

The Court: Was it a rule of the agent's office that all returns showing an income above a certain amount automatically go to the agents for auditing?

A. Yes, your Honor.

Q. What was that sum, do you remember?

A. I think at the present time it is gross income over [449] \$25,000, or net income above \$5,000. I wouldn't be sure of that. That is the best of my knowledge.

(Testimony of J. Bryant Eustice.)

Mr. Robnett: May I have the answer, please, Mr. Reporter.

(Answer read by the reporter.)

The Witness: That changes from time to time.

The Court: So whether there is any payment made, or anything else, automatically all returns go through that mill, above those figures?

The Witness: No, the collector's office, under a certain procedure, I understand, are authorized to make audits in larger amounts, even as large as the agent's office there.

The Court: What I mean to say is, any return over the base figure is audited by somebody automatically?

A. If I understand your question, all returns?

Q. Yes. A. Not all returns, no.

Q. Over a certain figure?

A. No, your Honor.

Q. (By Mr. Robnett): Then, the 1942 report of Sam Ormont, which was filed, I assume, on or before March 15, 1943, was turned over to you to audit some time before 1945, was it not?

A. I don't believe it was. It was turned over to me some time not too long before November 8, 1945.

Q. When you audited 1942 you audited that before you [450] did any of the other returns, I take it, did you?

A. Well, I wouldn't say that. They are audited pretty much at the same time, where we have three years to cover.

(Testimony of J. Bryant Eustice.)

Q. Didn't you start with the oldest one, or did you? A. Not necessarily.

Q. Do you remember what you did in this instance?

A. I contemplated making a complete audit of all three years, so any information I was taking from the books and records I would cover the three years, at the same time.

Q. I see. Let us take up the items that you say, or said yesterday, I don't know whether you did today—you determined were additional income that had not been reported by Mr. Alman in 1942.

The Court: That's the \$3300 item?

Mr. Robnett: Yes, your Honor, I believe that's right, \$4459.22. Is that the correct amount that you claim was not reported?

Q. You stated one of those items was an item of \$760, did you not?

Mr. Strong: I object to that upon the ground that I don't know which items one of those items would be. There are a lot of items.

The Court: One of the items comprising the \$3359.22—I take it, that is what you mean?

Mr. Robnett: Yes. [451]

A. Yes, one of the items is \$760.

Q. Tell me where and how did you get that item?

A. Well, the first step, I think I have described, was to inspect all of these bank deposits, make a statement of those, showing the amount that was deposited, and where the checks came from, item by item.

(Testimony of J. Bryant Eustice.)

The next step was to trace all of those funds that could be traced to sources that did not represent income. I might state that before doing that I had determined the net worth of the taxpayer at the beginning of 1942, January 1st, 1942. In other words, I had gone back as far as 1931 to determine what assets the taxpayer had as of the beginning of 1942, not only by what the taxpayer told me, but what I could find out for myself independently, and from that information I made up his net worth statement.

From that I knew at the beginning of 1942 what assets he had, such as his business account, his bank accounts, loans that were outstanding, corporation stocks that he owned, government bonds that he owned, and his investment in the Acme Meat Company. And then I investigated as to which of those items had been liquidated, if any of them, how much of those had been liquidated, where the money went to, if that went into his personal bank accounts, and I was able to trace all of those.

I might say I first determined what he had drawn out from [452] his business, \$12,506.09, that he had drawn from his business.

Q. In 1942?

A. Yes, sir. \$12,000 of that he deposited into his bank account. That was as far as I could determine. He drew no more, no less from his business. That is, he received this interest item of \$1299.75, from Sam and Ben Borne. He deposited \$990 of that to his bank account. His bank account

(Testimony of J. Bryant Eustice.)

was also comprised of interest on savings account of \$135.18. He received payments on a loan from Sam and Ben Borne of \$10,000. He deposited **that** to his bank account.

The Court: This is an analysis of the bank account you are making now?

The Witness: Yes. He received the \$200, which I stated yesterday was from Nolan Allen, which there was some question about. However, by putting it here, and considering it not representing income, I did not take it in his income, but I show it on my net worth statement, beginning 1942, as a loan to Nolan Allen. In other words, money that he had accumulated before 1942, which, when it was liquidated, would not be taken into income.

And, in addition to those items that I could trace—and I might say, not only what I could trace, but I have gone back and actually traced those items that came from his business, or were liquidated, and he deposited cash, \$1260 in checks, \$911.72—— [453]

The Court: In his bank account?

A. In his bank account. He had in his bank account, at the beginning of 1942 \$13,038.44.

Q. (By Mr. Robnett): His personal bank account, or Acme?

A. His personal bank account. The total of that amount was \$38,535.44. He drew out of that bank account additional capital or money that he had deposited, and additional capital of the Acme Meat Company, of \$3800. He purchased defense bonds

(Testimony of J. Bryant Eustice.)

from withdrawals from that bank account, of \$7750.

He made payments on personal life insurance of \$1058.58. He made a payment on the 1941 Federal income tax of \$1015.17, and he had other personal expenditures paid by checks, of \$887.40. Total withdrawals were \$14,510.72. That amount taken from the bank balances, plus deposits left a remaining balance remaining in the bank accounts of \$24,024.62, which was the amount shown on the bank statements at the end of 1942.

Q. What was the amount in the beginning of the year? A. \$13,038.44.

Q. How much? A. \$13,038.44.

Q. Is that the total of all his bank accounts?

A. Yes, sir.

The Court: Personal.

The Witness: All of his personal bank accounts. That [454] represented the three personal bank accounts, savings account No. 747, savings account No. 224808, and commercial account in the Security First National Bank.

The Court: What was the figure at the end of the year?

The Witness: \$24,024.62. Having then determined how much of this represented unidentified deposits, I took these items as of January 1st, 1942, and then determined what the taxpayer had on hand at the end of December 31, 1942. This total of these bank accounts, the balance of the loans that he had, his corporation stocks, U. S. Government bonds, investment in the Acme Meat Company, and from

(Testimony of J. Bryant Eustice.)

that I determined he had an increase in his assets of \$11,263.27. That is, during that year he had an increase in assets by that amount of money.

To that I added the payment he made on life insurance premiums of \$1058.15, a payment he made on his 1941 Federal income tax of \$1015.17, and other personal expenses paid of \$1703.24. That was a total amount of \$3776.56.

Adding that to the increase in his net worth gives a figure of \$15,039.83. From that I deducted a portion of the above personal expenses that were deductible on his income tax of \$616.41. That left a taxable net income, shown in this report, of \$14,423.42, which is the exact figure that I concluded by taking into account the unexplained bank deposits.

In other words, this was the second check upon my [455] computation to determine after I got through: Well, is this the correct income of the taxpayer? By picking these items out, item by item, and his net worth, the computation shows he actually had something to represent this increase shown on the tax return. Either way is a sufficient method of computing the tax for income tax purposes.

Mr. Robnett: I move to strike out the last statement as voluntary.

The Court: It may be stricken. I think the question is, what makes up the item of \$3359.22—what items?

Mr. Robnett: The question, your Honor—pardon me.

(Testimony of J. Bryant Eustice.)

The Court: That was what you asked about 20 minutes ago. I have been trying to find out what it was.

Mr. Robnett: I asked him to start with the item of \$760.

The Court: Yes.

Mr. Robnett: The first item. Whenever he gets around to answering that——

The Court: \$760?

Mr. Robnett: Yes. I want to get his breakdown on that.

Mr. Strong: In order to assist, since the witness has mentioned various figures, we prepared a compilation of those figures. I have given counsel a copy, and it might assist your Honor and the witness also.

The Court: Do you have any objection to my receiving it, counsel? [456]

Mr. Robnett: I have none, your Honor, of receiving it. It is not offered in evidence?

Mr. Strong: No. it is just to assist in those figures.

The Court: Those figures he referred to just now?

Mr. Strong: Yes.

The Court: To-wit, a summary of adjustment of income, income not reported, \$3359.22.

The Witness: That was made up of cash deposits to the personal commercial account of Sam Ormont, in the Security First National Bank.

The Court: \$760?

The Witness: \$760.

(Testimony of J. Bryant Eustice.)

Q. (By Mr. Robnett): Where are those deposit slips, please?

A. I believe that is Exhibit 14.

Q. Do you have it before you? A. Yes.

The Clerk: No. 14, don't you have the exhibit?

A. Yes, it is in my hand.

Q. (By Mr. Robnett): Will you kindly show me Exhibit 14 the specific items that you claim constitute income that was unreported by the defendant Sam Ormont in 1942, aggregating \$760?

A. The first item was \$600. They were all from the Acme Meat Company; no income taken into account. [457]

The Court: All from what, the Acme Meat Company?

A. All from the Acme Meat Company.

The Court: \$760?

The Witness: \$600.

Mr. Robnett: Just a minute before you pass that. What is there on these deposit slips that tells you these are all from the Acme Meat Company, or that any of them are from the Acme Meat Company?

A. Well, I can tell you the process I used in determining that. I examined all of the checks of the Acme Meat Company, and particularly the withdrawals of Sam Ormont, and those checks are drawn on the Security First National Bank. It so happened that the business bank account was at the same place as his personal bank account. That is No. 90-903.

(Testimony of J. Bryant Eustice.)

Q. The clearing house number of the bank?

A. Yes. [458]

Q. And every one of the checks listed there are on that bank and they are for \$100 each, and there are six of them in that deposit slip, is that correct?

A. Yes.

Q. Now there is no showing of any dates or anything else on those items as to when those checks were issued?

A. I sat down at the bank with my book here which I have in front of me now showing these deposits which I had copied.

Q. Deposits where, to Sam Ormont?

A. The deposit of \$600, and each of the items listed, from 90-903.

I also had beside me the ledger cards of the Acme Meat Company of the same bank account. I traced these items drawn on 90-903 to see whether they were recorded as a withdrawal from the ledger cards of the Acme Meat Company.

The Court. To see whether similar amounts were, you mean?

The Witness: To see whether similar amounts were; yes.

Mr. Robnett: Now wait a minute.

Q. This deposit slip is dated 1-10-42, isn't it?

A. Yes, sir.

Q. Was there any way, or have you any way of determining from any record that these six

(Testimony of J. Bryant Eustice.)

items were drawn on the Acme Meat Company account and, if so, what information was it [459] that determined that?

A. You mean whether they had been drawn?

Q. Yes, were they all dated the same day as this deposit slip? A. No, they were not.

Q. Have you a record in Exhibit 40 telling when those various checks were drawn that you claim were the Acme Meat Company's checks?

A. Well, some of these checks were drawn, that is, they might be held as evident here that the taxpayer had held these until he had six of them. He was drawing, I believe at that time, \$100 a week and he deposited them all at once to the bank account. The checks themselves indicate that on the back of them. You can tell by the stamp, the cancellation stamp.

The Court: Did you see the checks?

The Witness: I saw all of the checks.

Q. (By Mr. Robnett): And did you take a note of the dates of those checks that you claim were Acme Meat Company checks to Sam Ormont and did you take a note of the bank stamp thereon as to when they were cashed?

A. No. I explained, I believe, the method I used in determining whether these were charged to the Acme Meat Company account.

Q. When you say "these"— [460]

A. The checks that were deposited to this bank account.

(Testimony of J. Bryant Eustice.)

Q. Have you any means of knowing, not just guessing but knowing, that this deposit slip here represents the identical checks you were referring to that were issued by the Acme Meat Company?

A. It would have to——

Q. You can answer that yes or no.

A. We know beyond very much of a doubt when we look that there were six \$100 checks that were deposited to the taxpayers' account in the same bank, and we look at the business bank account and see if they were charged against that bank account. Well, that is the basis on which I know.

Q. You say, "and see that they were charged." You mean you saw that there were some charged against them?

A. That there were six \$100 checks charged to that bank account.

The Court: You say you examined the checks?

The Witness: I had seen the checks there to know that these checks had been drawn on the account but I didn't have the checks with me at the time.

The Court: Did you see the checks to see if they were stamped in the clearing house on that date or perforated paid after that date or on that date, that is, the Acme Meat Company six \$100 checks?

The Witness: I wouldn't testify as to just that particular [461] detail. What I was looking to on

(Testimony of J. Bryant Eustice.)

examining the checks was to determine if any of the checks did not go into the Sam Ormont personal bank account.

The Court: Were they payable to the order of Sam Ormont, those checks?

The Witness: Yes, they were, your Honor.

The Court: You do not remember whether they were all dated the same date or cashed the same time, perforated Paid the same time or not?

The Witness: Oh, no. I determined by examining the checks that practically all of them were deposited to Sam Ormont's personal bank account. Then I made this check to determine whether the checks that were shown on a particular deposit slip were actually charged to the Acme Meat Company account on the day that this deposit slip says, or possibly the day after.

The Court: There were six \$100?

The Witness: There would be six \$100 checks.

The Court: On the Acme Meat Company ledger sheet that would show up, wouldn't it?

The Witness: That is correct.

The Court: It would show up on these exhibits we have here?

The Witness: Yes, your Honor. The two accounts were in the same bank. [462]

The Court: What date is that?

The Witness: January 10, 1942.

The Court: And it shows six \$100 items?

The Witness: Six \$100 items deposited to the taxpayer's personal bank account.

(Testimony of J. Bryant Eustice.)

The Court: And charged against the Acme Meat Company?

The Witness: Yes, sir.

The Court: On that date?

The Witness: Yes, sir.

The Court: All right.

Q. (By Mr. Robnett): That is \$600 of it. Where is the balance of the \$760?

A. None of those were taken into income.

Q. None of what items?

A. None of these six \$100 checks or none of the money that came from Acme Meat Company.

The Court: He was asking you how you made up this \$760 additional income. That is what we have been talking about.

The Witness: I understood he asked me how I knew.

The Court: No, he was asking you for the items that make up the \$760. Let's not waste time with things you didn't take into consideration.

As a matter of fact, I think this is a good time to adjourn. [463] Recess until 10 o'clock tomorrow morning. Remember the admonition.

(Whereupon, at 4:25 o'clock p.m., a recess was taken until 10:00 o'clock a.m., Thursday, May 29, 1947.)

Los Angeles, California, Thursday, May 29, 1947

10:00 A.M.

The Court: United States vs. Ormont and Himmelfarb. Are you ready?

Mr. Strong: Ready.

Mr. Robnett: Ready.

Mr. Katz: Yes.

The Court: The usual stipulation?

Mr. Strong: So stipulated.

Mr. Katz: Yes.

Mr. Robnett: So stipulated.

The Court: Mr. Eustice.

J. BRYANT EUSTICE

a witness recalled by and on behalf of the plaintiff, having been previously duly sworn, resumed the stand and testified as follows:

Cross-Examination

(Continued)

By Mr. Robnett:

Q. At the close of yesterday's session of court, after you had identified in your record six checks for \$100 each, and had testified quite at length on them, the following transpired. I said: That was \$600 of it. What was the balance of the \$760? To which you answered: None of those were taken into income. —Now, I am still seeking from you an explanation of where you got the \$760 item which, on direct examination was used by you in your calculations, and claimed by you to be unac-

(Testimony of J. Bryant Eustice.)

counted for income of Samuel Ormont in 1942. Do you understand what I am seeking?

A. Yes, sir.

Q. All right. Let's confine ourselves to that item of \$760.00, and if the \$600 you testified to was part of the item—I understand it was?

A. No, sir, it was not part of the item. I am sorry; I misunderstood your question yesterday.

Q. It was not any part of it?

A. It was not any part of it.

Q. We will then start with this proposition; answer this question: Where do you find in any of the records which you have, or examined, or had available, the sum of \$760 which you claim Mr. Ormont received as an income in 1942, and did not account for the same?

A. Can I have my work papers? That is——

The Court: Exhibit 40.

The Witness: 40, I believe. I am reading from my analysis of the——

Mr. Robnett: Just a minute. I don't want you to read from it until you show it to me.

Mr. Strong: May I have the statement read?

Mr. Robnett: I don't want you to read from it until you show it to me. [469]

Mr. Strong: Does that mean show it to him in private?

The Court: Show it to him right there, if that's private.

Mr. Strong: Can't he state what the item is?

(Testimony of J. Bryant Eustice.)

The Court: Not until counsel has an opportunity to examine what the witness is going to read. It may be objectionable.

Mr. Strong: All right.

Q. (By Mr. Robnett): You have this opened here, this page. This is Exhibit 40?

A. That is correct.

Q. In general, what is that page intended to represent?

A. An analysis of the deposits to the commercial account of Sam Ormont at the Security First National Bank, Huntington Park.

Q. That covers deposits only, does it?

A. That is correct.

Q. Can you from that page pick out the items which you claim constitute the \$760, if they are embraced in more than one item or, if not, is there a \$760 item there that you can pick out, that you claim was unreported income? A. Yes, sir.

Q. Will you give me the dates and the amounts of those items? A. April 3rd— [470]

Q. Just a minuate, please, until I write it down. April 3rd. This is 1942?

A. 1942,—of \$50 deposit.

Q. \$50.

A. Yes, sir, which was all currency. On September 15, a deposit of \$1166 which was made up of checks and currency. \$380 currency was taken into account, as income, and a check for \$380 currency was taken into account and unexplained.

(Testimony of J. Bryant Eustice.)

Mr. Robnett: Just a minute. Will you read the answer to me?

(Answer read by the reporter.)

Q. Please find for me the \$380.

A. A check of \$186 was taken into account also.

The Court: How do you mean,—taken into account?

A. Considered as unexplained income. And on September 30, a deposit for \$430, of which \$330 currency was taken into account as unexplained income.

The Court: How much?

A. \$330.

Q. (By Mr. Robnett): What date was that?

A. September 30th.

Q. September? A. Yes, sir.

Q. That was the entire check, or only a portion of it? [471] A. The \$330 was currency.

Q. Currency? A. Yes, sir.

Q. Now let's see if I understand you correctly. The \$760 item I asked you about was made up of \$50 currency deposit of April 3, 1942, and of \$380 in currency deposited September 15, \$380 check——

A. \$186 check.

Q. You changed that, you changed the \$380 to a \$186 check, is that correct?

A. That is what it is correctly, \$186.

A. All right. And September 30, \$330 currency?

A. That is correct.

Q. That makes up your entire \$760, does it?

A. \$760 cash and \$186 check.

(Testimony of J. Bryant Eustice.)

Q. Then the \$186 formed no part of the item testified to of \$760? A. No, sir.

Q. That is a separate item, the \$186 check?

A. That is correct.

Q. All the others were currency?

A. That is correct.

Q. And deposited in the bank to those particular dates that you have mentioned, to Mr. Ormont's account? A. That is correct.

Q. And the reason that you charged them up to Mr. Ormont as income was merely because you had no other explanation of them? [473]

A. No, sir.

Q. I thought that was what you said, they weren't explained.

A. I was able to determine that he could not have had that much cash that did not represent income?

Q. How were you able to determine that?

A. From tracing his withdrawals from the Acme Meat Company, the taxpayer had had only \$506.09 that he did not deposit in his bank account.

Q. You mean withdrawals from the Acme Meat Company?

A. Yes, sir. That could have been cash on hand, or cash. He received interest checks from Sam and Ben Borne of \$1299.75, of which he deposited \$990 in his bank account. He had \$309.75 that could have been cash, those checks could have.

Now the next question that came in my mind to be answered was, what was the source of the amounts

(Testimony of J. Bryant Eustice.)

that the taxpayer used for personal living expenses. Well, he paid by check \$887.40 and it is obvious the taxpayer could not live on——

Q. Just a moment.

I move to strike that.

The Court: It may be stricken.

Did you check through his bank accounts to see whether he cashed a check? [474]

The Witness: Yes, your Honor.

The Court: Had drawn a check out on any of these various bank accounts?

The Witness: He only had one checking account and I examined all of the checks drawn on that.

The Court: What about the savings account?

The Witness: I examined all of the withdrawals and traced the disposition of any withdrawals that he made from his savings account.

The Court: Even for months before? In other words, might he not have drawn that out a couple of months before and carried it around in his pocket and then put it back?

The Witness: I traced the withdrawals back, I have a very good analysis back, to 1938 anyway, and there was no indication that the taxpayer had any large amounts of cash on hand or drawn out any large amounts of cash to have on hand.

The Court: In 1938?

The Witness: Yes.

The Court: There are some rather large withdrawals in some of those accounts, aren't there?

The Witness: Yes, your Honor.

(Testimony of J. Bryant Eustice.)

The Court: From the savings accounts?

The Witness: Yes, your Honor. I can identify the disposition of those withdrawals. [475]

The Court: Every withdrawal?

The Witness: Yes, your Honor. I can tell you what disposition I made of them.

The Court: Back to 1938?

The Witness: Back to 1938. I have them here in my work papers.

Q. (By Mr. Robnett): Let me ask you: At the beginning of the year 1942 you did not know, did you, how much cash other than bank deposits the defendant Sam Ormont had?

A. At the beginning of 1942?

Q. Yes, other than bank accounts.

A. Except as I have mentioned here from tracing his withdrawals and whether he had drawn any amount of cash that would be in excess of his living expenses for these years prior to 1942.

Q. To '38?

A. To '38. I made analyses back further than that but I say I could make a pretty accurate one from 1938 on.

Q. Weren't you informed by—either you or your associate and have in your Exhibit No. 40—a statement to the effect that the defendant told you at the beginning of '42 he had some cash that was not in the banks?

A. He had told me, yes, during the time that I questioned him, that he had had cash on hand from time to time, [476] that he had substantial amounts of cash on hand.

(Testimony of J. Bryant Eustice.)

Q. Yes, that is right. He told you that he had been doing that for years, didn't he?

A. That is what he said.

Q. Therefore you, when you saw currency coming into these accounts, you didn't allocate them to cash that the defendant had told you he had had on hand for years but because it was currency and you couldn't find where he had withdrawn it quickly before the deposits you simply earmarked it as income, didn't you? A. The answer is no.

Q. Is no? A. Yes, sir.

Q. That is, no, that you didn't give him any credit for the money he had on hand?

Mr. Strong: That is not what he said, your Honor.

Mr. Robnett: All right. I will ask to have the question read. He has answered no.

Mr. Strong: It speaks for itself.

The Court: Read the question and the answer.

(The record referred to was read by the reporter as set forth above.)

The Witness: I can explain my answer to that, if you wish.

Mr. Robnett: I don't care for any explanation.

Mr. Strong: He didn't answer it, your Honor.

The Court: He did answer it.

Do you wish to explain it?

The Witness: Yes, your Honor.

The Court: All right.

The Witness: As regarding the amount of cash the taxpayer stated he had on hand, he would not

(Testimony of J. Bryant Eustice.)

give me any definite amount or state any amount he had on hand at any time, and I traced, attempted, I didn't just simply arbitrarily put this cash into income but attempted to determine if the taxpayer could have had any cash on hand at that time, and from my analysis I could not determine that he had any amount of cash on hand there. And as the items were unexplained I have no alternative but to consider them as income.

Mr. Robnett: I move to strike out the portion of where he said the items were unexplained and I had no alternative.

Mr. Strong: That is part of the answer.

Mr. Robnett: That is a conclusion of the witness.

The Court: It is a conclusion of the witness and may be stricken and disregarded. That is what the jury has to decide, not this witness.

By the way, you say you analyzed all these thousands of withdrawals in these bank accounts here and were able to trace every one of them?

The Witness: Your Honor, not regarding the business bank accounts because he had books and records.

The Court: But Sam Ormont's, in the savings account, in one of them here—I don't know what bank it is on—but here are withdrawals of \$12,000, \$2000, \$1000, \$2000, \$650, \$3000, \$2000, \$5000, \$2000, \$7000, \$5000, the next day \$5400, \$1000, \$2500, \$7600, \$7500, \$4700, \$7500, \$2500—you were able to trace every bit of that money that was drawn out in cash?

(Testimony of J. Bryant Eustice.)

The Witness: I will be glad to identify any, your Honor.

The Court: I am asking you, you were able to trace every bit of it so you could come to a conclusion that the man had committed a criminal act by having money which is income of \$760 in cash?

The Witness: I was able to trace these large withdrawals, your Honor, yes, as to what disposition was made of them.

The Court: Every cent of them?

The Witness: Well, as I say, I refer to the large withdrawals and I believe they are all large withdrawals.

The Court: There are some of \$400, \$100, \$650, \$200, \$450, \$250——

The Witness: In what years, your Honor? [479]

The Court: Well, this \$250, in 1940; \$400, in 1938—two of them, for \$200.

The Witness: Such items as \$250 and \$300, I had to assume, or consider, that they were used for living expenses, and that the amounts I had put or allocated to living expenses were reasonable amounts, and whether the taxpayer was drawing out enough money out of these bank accounts over and above living expenses, that he could have cash on hand.

The Court: In other words, you indulged the presumption that he did not carry any of this money in cash there, and didn't spend it for living expenses?

The Witness: That he did spend it for living expenses.

(Testimony of J. Bryant Eustice.)

The Court: That he did spending it?

The Witness: Yes.

The Court: That he had spent it for living expenses, and did not carry some around in his pocket?

The Witness: Yes, the amount drawn out was not over and above living expenses. There was no evidence he was drawing out large amounts of cash from any of these accounts, and keeping it on hand.

The Court: Did you know his scale of living?

The Witness: I only know that he maintains a home.

The Court: Is he married?

The Witness: He maintains a home and supports his mother.

The Court: You don't know how much money is spent on the [480] home?

The Witness: I only—no, I don't know.

Q. (By Mr. Robnett): You did not go back to his income for 1928, 1929 and 1930 and 1931 and 1932, did you?

A. I made an examination, but when we go that far back, I could not say it was an accurate accounting in years that far back.

Q. You did not make any accounting then back for those years at all, did you?

A. I attempted to determine whether there were any large amounts of cash that could not be accounted for, and I could make a fairly good accounting except for probably several items during that period of years. I think there was one item of \$2000, and there was another item of \$1850 that

(Testimony of J. Bryant Eustice.)

was drawn out. It was all back in 1938. I did not know—could not determine just what disposition he made of those two particular items.

Q. \$2000 and the \$1800 item, you could not tell what disposition had been made of those in 1938?

A. It was back of 1938.

Q. It was back of 1938? In other words, you could not tell? Did you make any examination of amounts the defendant made and earned from any source, during 1928, 1929, 1930, 1931 and 1932?

A. Can I have the question again, please? [481]

(Question read by the reporter.)

A. Well, my examination was an analysis of his bank account; what I could determine from that analysis.

Q. His bank accounts?

A. And from his business account.

Q. During those years I have named, 1928, 1929, 1930, 1931 and 1932?

A. Yes, sir.

Q. You recall, do you not, that during that time we had some little depression occur, and some bank failures, don't you?

A. That's correct.

Q. Did you ask the defendant at any time whether he had kept his money from back years, any of it, other than in bank accounts?

A. He stated that he had.

Q. He stated that he had?

A. Yes.

Q. He also told you, did he not, that during those years he earned considerable money, and did keep a good portion of what he earned in the form of cash, and not in any bank accounts?

A. That is what he stated.

(Testimony of J. Bryant Eustice.)

Q. Let us take up another item. I believe you mentioned the other day that you had several items to make up this [482] thirty-odd hundred dollars that you claimed. You had a \$500 item, didn't you, that you claimed was income?

The Court: What about this \$186 check? Why do you call that income? It was a check from whom, for what?

The Witness: I didn't trace the check to its source.

The Court: You knew it was a check, though?

The Witness: Yes.

The Court: Was it a check to cash?

The Witness: All I can tell, it was a check deposited to his bank account. I could not trace the source to any of the taxpayer's bank accounts.

The Court: Did you determine whether or not his mother had a bank account?

The Witness: Yes, your Honor.

The Court: Did she?

The Witness: Not during that period, to the best of my knowledge.

The Court: Did she ever give him any checks?

The Witness: Not during that period; during the period under audit.

Q. (By Mr. Robnett): You never traced the \$186 check, as to where it originated?

A. That is correct.

Q. But when you saw it there as a deposit you just put [483] it in as an unaccounted income?

A. No, I did not put it in.

(Testimony of J. Bryant Eustice.)

Q. But you did put it in as unaccounted income?

A. It went into unaccounted income.

Q. Did you not know, and ascertain on your investigation, that Mr. Ormont had loaned money to various and sundry people at various and sundry times, over the course of years?

A. Yes, I have mentioned several different loans that were outstanding back in 1942.

Q. Yes. You didn't pretend to make an analysis of all the loans that he had made to people, whether they were then outstanding or not, did you?

A. I attempted, by examining his bank accounts, and business bank account, to determine whether there were any other loans outstanding, and I asked him whether he had any other loans outstanding.

Q. Did he tell you that he loaned various sums of money to people without giving it to them in a check, but handing it to them in currency?

A. May I have the question read, please?

(Question read by the reporter.)

A. No, sir, he did not.

Q. Did you ask him about it?

A. I asked him if he had any other loans outstanding as of January 1st, 1942. [484]

Q. And he told you no?

A. He told me no.

Q. The only ones he mentioned were what ones?

A. I believe the one to Sam and Ben Borne was the only one he mentioned. I determined, from my investigation, that he had the other two loans,

(Testimony of J. Bryant Eustice.)

one which you say was not a loan, to Nolan Allen, of \$200. Then there was another loan to Frank Smith that showed up, that he had made, during the investigation. That is, one showed up during the investigation.

Q. It had been made long prior to the investigation? A. Yes.

Q. Prior to 1942?

A. So that money that came in from those loans was not taken into income.

Q. But this morning in answer to questions, you only mentioned just the one loan to Borne?

A. That is correct.

Q. And you found he actually had other loans out, didn't you? A. Yes.

Q. The one to Smith you testified about?

A. The one to Smith.

Q. And at the time that you asked him that question, isn't it a fact that he told you that he did not know right off hand who all owed him money; that he let various people have [485] money at various times. Some of them had paid back, maybe, and some of them had not fully paid; that he did not keep any account of that at all?

A. He never made any such statement as that to me.

Q. He did not? A. No.

Q. Taking up the \$500 item that you mentioned, where did you get that?

A. That was unexplained cash deposited to the taxpayer's savings account No. 747, in the Bank of America, Soto and Brooklyn.

(Testimony of J. Bryant Eustice.)

Q. That was all one deposit, was it?

A. No, it was several items.

Q. Will you give me the dates and the amounts?

A. February 4, 1942, \$50.

Q. How much?

A. \$50. September 19, 1942, \$50. October 17, \$400, making a total of \$500.

Q. Those items that you just testified to, totaling \$500, that was cash? A. In cash.

Q. And the item of \$186, which you testified to, all the items of \$760, aggregating the \$760, which you testified to—each and every one of those items were shown upon the bank account and bank records of Mr. Ormont's bank book, were they [486] not, as deposits?

A. They were deposits to this particular bank account I have named, yes.

Q. You have an item of \$225.72. What was that?

A. Check deposit on June 30, 1942, \$206.11; check deposit October 17 for \$270.60.

Q. The item is only \$225.72.

A. \$725.72, I believe.

Q. In the record it is only \$225.

A. It should be \$725.72.

Q. Are there some more items? Is that \$270 or \$370? A. \$270.

Q. \$270.60?

A. Yes, the same date checks for \$28.12, \$16.14, \$27.15; a check deposited September 19 for \$177.60. I believe that makes a total of \$725.72. [487]

(Testimony of J. Bryant Eustice.)

Q. In any event, each and every one of those items that you have just testified to you charged up against him as unaccounted for income for 1942?

A. That is correct.

Q. You did that after you had checked all the records, did you, that you would have checked and are using here from Exhibit 40?

A. After I made the examination, yes, that I have testified to.

Q. After you had done that you then charged them all up to him as unaccounted for income, is that correct? A. That is correct.

Q. You had made a very thorough examination of all the books and records, both of the Acme Meat Company and of Mr. Ormont's bank account when you did that, hadn't you, or bank accounts I should say?

A. I made a thorough examination of his bank accounts and such examination of his books and records as I deemed necessary in the examination.

Q. Knowing at the time, did you not, that you were going to testify in a criminal case against this man?

A. No, sir, I do not know when I make these examinations that I am going to testify in any criminal case.

Q. You knew though after you had made the examination, sometime after it, you did learn that you were going to testify, didn't you, in a criminal case? [488]

A. I knew after there was a grand jury indictment.

(Testimony of J. Bryant Eustice.)

Q. Did you ever at any time go back and re-check any of those items to see whether you had made a mistake or not?

A. I don't know as I understand your question.

Mr. Robnett: Read the question. I think it is understandable. If it isn't, I will try and make it so.

(The question referred to was read by the reporter as set forth above.)

The Witness: Not after once my report was submitted, no.

Q. (By Mr. Robnett): By the way, when did you complete your examination and report?

A. The examination report was completed about March 18, 1946.

Q. March 18, 1946?

A. That is correct.

Q. And when did you turn in your report, if you turned it in to someone?

A. Well, it would be approximately that date.

Q. To whom did you deliver the report?

A. I delivered the report to my office, it goes through my group chief, to the review section for review.

Q. Who would be in charge of that review?

A. Well, at that time—you want the man's name?

Q. Yes. [489]

A. At that time the man's name was Mr. Maddox.

(Testimony of J. Bryant Eustice.)

Q. Where is he, do you know?

A. I believe——

Mr. Strong: What is the difference, your Honor? I object on the ground it is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

The Witness: Well, he is still with the Government in the Government offices at 417 South Hill Street, the Subway Terminal Building.

Q. (By Mr. Robnett): You mean in the Revenue Department? A. That is correct.

Q. Mr. Eustice, you do know at this moment that the defendant Sam Ormont is now on trial under an indictment charging him with a felony for alleged violation of the Internal Revenue Law in that he failed to account for certain income in 1942, don't you? A. Yes, sir.

Q. You knew that when you testified the other day, didn't you? A. Yes, sir.

Q. I will ask you as to the items you have just given me, the check for \$206.11, I believe another deposit or check for \$270.60, and some other checks which you named (I haven't [490] the amounts written down) aggregating \$725.72, according to the correction of the transcript this morning?

A. That is correct.

Q. Will you testify now beyond all reasonable doubt and to a moral certainty that each and every one of those items constituted unaccounted for taxable income of Sam Ormont for the year 1942?

(Testimony of J. Bryant Eustice.)

The Court: It isn't up to him to decide anything beyond a reasonable doubt and to a moral certainty. That is up to the jury.

Mr. Robnett: That is correct, your Honor, but if nobody will testify to it I don't think the jury could, on a man's testimony, if he is only making it on an estimate or a guess.

The Court: All right. I will allow the question. Read the question.

(The question referred to was read by the reporter as follows:

("Q. Will you testify now beyond all reasonable doubt and to a moral certainty that each and every one of those items constituted unaccounted for taxable income of Sam Ormont for the year 1942?")

Mr. Strong: Well, your Honor, I would like to object to the use of the words "unaccounted for." If he means unreported, that is another matter.

Mr. Robnett: All right, unreported taxable income. Change it to unreported.

The Witness: It is still my opinion as it was at the time that it was unreported income.

Q. (By Mr. Robnett): Just answer the question, please.

The Court: I think that is his answer, his opinion that it was unreported income.

By the way, have you finished on '42?

Mr. Robnett: No, I haven't, your Honor. I am just starting.

(Testimony of J. Bryant Eustice.)

The Court: While you are winding up on the next one, I would like to ask him a question here. Yesterday Mr. Strong handed me a series of sheets, comparative statement of net worth. You gave the defendants' one?

Mr. Strong: Yes, sir. I don't know whether the witness has one or not.

The Court: It is comparative statement of net worth.

Mr. Strong: May I pass one to the witness?

The Witness: I have one.

The Court: You have one before you, Mr. Robnett, 1942 comparative statement of net worth?

Mr. Robnett: Yes, your Honor.

The Court: Then the other is summary of adjustments 1942. [492]

The Witness: I haven't a copy of that before me. Well, I can find it in my report here.

The Court: You have it now?

The Witness: Yes, I have one in my report.

The Court: Now Sam Ormont reported \$11,507.93 was his net income before his allowable deductions, summary of adjustments.

The Witness: Yes, \$11,507.93.

The Court: Yes.

The Witness: Yes, your Honor.

The Court: Then you allowed \$610.41 deductions, isn't that right?

The Witness: \$616.41.

The Court: Yes. Over on your comparative statement of net worth you say that his increase

(Testimony of J. Bryant Eustice.)

in net worth was \$11,263.27, therefore his income was \$11,263.27, isn't that right?

The Witness: No, your Honor. That is his increase in net worth, but then he had other expenditures that are not deductible for income tax purposes.

The Court: That is just what I am going to. His increase in assets was \$11,263.27?

The Witness: That is correct.

The Court: Then on this adjustment here where you finally wind up and show his net income on the comparative statement of net worth of \$14,423.42, the same as you do on your [493] summary of adjustments, is that right?

The Witness: That is correct.

The Court: But over here you say his increase in net worth is the figure I mentioned, \$11,000 some-odd, and you calculate that as his income, and then you disallow certain items that he had claimed as expenditures of \$3776.56, isn't that right?

The Witness: No, your Honor, that isn't the explanation.

The Court: You disallow them, do you not?

The Witness: No, I am determining—I stated on my report that he has an increase, or that he had net income of \$14,423.42. Now on the comparative net worth statement I am accounting for what he did with that money. If he received \$14,423.42, well he must have something to show for it. All right. To start out with, he has to show

(Testimony of J. Bryant Eustice.)

for it \$11,263.27, which is the increase in his assets. But in addition to those assets he made these other payments, on life insurance, on his Federal income tax and other personal expenses.

The Court: Which you disallowed.

The Witness: No, I am just proving my income, your Honor. He had this increase in assets and he also had money to make these other payments. If he didn't make these other payments he would still have the money which would be still an increase in his assets there. But he received the benefits of the payments on his life insurance and the benefits of the payment on his income tax and the benefit of what he paid for personal living expenses, so he must have paid that out of his income.

The Court: Yes, but you disallow it.

The Witness: I added——

The Court: You do not allow it as a deductible expenditure, isn't that right?

The Witness: None of these items are allowed as deductible expenditures.

The Court: So you disallow as non-deductible expenditures a net amount of \$3160, that is \$3776, and then you allowed the deductions of \$616.41?

The Witness: Yes.

The Court: Then your actual increase, claimed increase, comes about by a disallowance of certain deductions?

The Witness: Well, it doesn't exactly work out that way. The man had increased his assets.

The Court: Yes, he had, but he had spent this money for these things.

(Testimony of J. Bryant Eustice.)

The Witness: In addition to that he had paid his living expenses, premium on his life insurance and these other items, amounting to \$3776.56.

The Court: Now your net increase in his net income is only \$2915.49. The difference between \$11,000—well, no, it is the difference between—I have the difference between [495] \$11,000 and \$14,000.

The Witness: \$3531.90 I believe is the net increase.

The Court: I have \$3532. So the net increase is less, is \$3500 and some-odd, is less than the \$3776 which you say he is not entitled to deduct as deductible income, as proper deductions.

The Witness: You understand, your Honor, I am not computing the taxpayer's income, that is, for income tax purposes on this report; I am accounting for his money or his funds.

The Court: You say taxable net income.

The Witness: If he had not paid—supposing that the taxpayer did not have life insurance or he didn't have to pay any 1941 income tax, or he hadn't paid any personal living expenses, somebody kept him for the year, well then he would have had this \$3776.56 in his bank accounts and that amount would have been reflected as a total increase in net worth of \$15,039.56.

The Court: I understand.

The Witness: Because of the fact that he had spent it we have to throw it back into his assets there because he had the use of the money.

(Testimony of J. Bryant Eustice.)

The Court: You ascertained that he did pay life insurance premiums in this amount?

The Witness: From the analysis of his bank account. [496]

The Court: And the Federal income tax, and from his check books?

The Witness: That is correct.

The Court: There was no effort to conceal those facts?

The Witness: No, your Honor.

The Court: All right.

Q. (By Mr. Robnett): You do find in your calculations, do you not, Mr. Eustice, you used that figure of taxable net income as shown by you of \$14,423.42, or did you?

A. I understand you to say that I used this figure?

Q. Yes.

A. I use this figure to prove the accuracy of the amount that I showed in my adjustment, that he had actually had assets to account for this increase in income.

Q. Now in arriving at the increase in assets of the defendant, you took into account a lot of Government bonds, did you?

A. I took into account that he had purchased a lot of Government bonds; yes, sir.

Q. Well, look at your report. Didn't you use those bonds and state that they were part of the taxpayer's worth?

The Court: Increase in net worth.

(Testimony of J. Bryant Eustice.)

Mr. Robnett: Increase in net worth; yes.

The Witness: Yes. In making the net worth computation [497] I used the amount of bonds that he had on hand at the beginning of '42 and at the end of '42.

Q. (By Mr. Robnett): Now do you have a record there before you, or did you have when you made these calculations, as to the bonds that you were utilizing in your arriving at the bond figure?

A. Yes, sir, I have.

Q. You have it there? A. Yes, sir.

Q. All right. Let me see it, please.

A. (Producing document)

The Court: You can look at it during the recess. Remember the admonition.

(Short recess.)

The Court: The usual stipulation?

Mr. Katz: So stipulated.

Mr. Robnett: Yes.

Q. (By Mr. Robnett): Mr. Eustice, I show you Exhibit 40, and I will ask you if that page, where I have opened it, is the page you referred to in making up your statement there as to bonds of the defendant Sam Ormont for 1942?

A. No, sir. It's this summary here.

Q. I see. All right. Where does 1942 appear?

A. These first five items.

Q. Where did you get that information from which you made that?

A. From the schedule presented to me by Mr. Phoebus, sitting there.

(Testimony of J. Bryant Eustice.)

Q. Do you know where he got it?

A. He told me that he got it——

Q. No. Do you know where he got it?

A. Not other than what he told me, no, sir.

Q. Nothing but what he told you? Did you at any time check them with the bonds yourself?

A. No, sir, I did not check these with the bonds.

Q. You never saw the bonds then?

A. I never saw the bonds, no, sir.

Q. According to the record you have there, you have, as [499] bonds purchased by Mr. Ormont in 1942, an aggregate of cost of how much?

A. \$8937.50.

Q. I will ask you about two items there. Do you know anything about the item for \$50 bond costing \$37.50. Do you know who purchased that?

A. The bond is in the name of Samuel S. Ormont and Mrs. Dora Goldberg.

The Court: Do you know who bought it? That is the question. His question is: Do you know who purchased it?

The Witness: All these bonds——

The Court: No, do you know who purchased it?

The Witness: Of my own information, I do not.

Q. (By Mr. Robnett): You don't know who purchased any one of the bonds that you have listed there for 1942 as belonging to Mr. Ormont, of your own knowledge?

A. I know yes, of two of the bonds.

Q. What two?

A. The one purchased on February 9, 1942, for \$3750.

(Testimony of J. Bryant Eustice.)

Q. Five \$1000 bonds? A. That is correct.

Q. You know of your own knowledge who purchased those?

A. Yes, I know where the funds came from to purchase the bonds. [500]

Q. I asked you if you knew who purchased them?

A. I think I am correct in my statement that Sam Ormont purchased them.

The Court: You mean you deduced that he purchased them?

The Witness: Perhaps that is correct, your Honor.

The Court: You don't know that he purchased them?

The Witness: They were purchased with funds drawn out of his bank account.

The Court: But you don't know that he purchased them?

The Witness: I have no further evidence than that, no, sir.

Q. (By Mr. Robnett): What information have you as to the funds drawn out to purchase those bonds?

A. He purchased them from funds in his savings account No. 224808, Security First National Bank, Huntington Park.

The Court: You mean the savings account shows withdrawal of that sum on money on or about that date? A. That is correct.

(Testimony of J. Bryant Eustice.)

Q. And the bonds showing up in his name, therefore you deduced he took that money to buy those bonds?

A. That is right.

Q. (By Mr. Robnett): That is the reason you say he purchased them, isn't it?

A. These particular bonds, yes. [501]

Q. Each and every one of those bonds you have listed there were made in whose names?

All the bonds for 1942 are in the name of Samuel S. Ormont or Mrs. Dora Goldberg.

Q. Nevertheless you, in your accounting in your comparative statement of net worth, charged all of the bonds up to Mr. Ormont as his, didn't you?

A. That is correct.

Q. You didn't—

A. Pardon me. Can I have the question again? I am not sure I answered it correctly.

(The question referred to was read by the reporter, as set forth above.)

The Witness: In my net worth accounting.

Q. (By Mr. Robnett): Yes.

A. Yes, that is correct.

Q. And in your calculation of his income for the year 1942 you charged him with the total cost of those bonds as being part of his income, didn't you?

A. No, sir.

Q. You used it in arriving, did you not, at the increase in his assets?

A. In arriving at the increase in his assets; yes.

Q. Well, you then deducted what you claim were his [502] assets from the beginning of the year from

(Testimony of J. Bryant Eustice.)

that item that you had as his assets at the end of the year, which latter item included all of these bonds you have testified about, and that is how you arrived at the increase in assets of \$11,263.27, didn't you?

A. The increase in assets was \$8,937.50.

Q. Oh, it was? A. Yes, sir.

Q. Well, the paper I have says increase in assets, \$11,263.27.

The Court: That is what mine says too.

The Witness: I thought you were referring to United States government bonds, the increase in those bonds.

Q. (By Mr. Robnett): No, that wasn't the question.

A. The increase in assets was \$11,263.27.

Q. Then what you have just said as to the \$8,937—was that the figure you just gave?

A. That is correct; yes, sir.

Q. That constitutes a portion of the \$11,263.27 increase in assets, doesn't it?

A. It is taken into consideration in this computation.

The Court: As an increase?

The Witness: As an increase in assets; yes, sir.

Q. (By Mr. Robnett): And it constitutes exactly that [503] amount, \$8,937.50 of the \$11,263.27, doesn't it? A. No, sir, it does not.

Q. It does not? A. It does not.

Q. How much does it constitute of the \$11,263.27?

(Testimony of J. Bryant Eustice.)

A. We are computing the increase in assets there at the beginning of the year and at the end of the year, and we have decreases on one side and increases on the other, and the \$11,263.27 is the net increase. You can't separate one item from the others. When we arrive at this figure of \$8,937.50, that is made up of items on the other side and it is balanced off by reductions of his bank account for the money that was drawn out of his bank account, and then in addition to that there was \$1137.50 that did not come out of these bank accounts, so the increase in this particular item is only 1137.50.

Q. From these bonds?

A. That is correct. Let's see if I have the figure that I gave you correct. (Examining document) \$1187.50.

Q. \$1187.50? A. Yes.

Q. You did not trace out from his bank book or any of his money anywhere the purchase by him of the \$50 bond and the \$100 bond you have on that list, did you?

A. That is correct. There are three bonds that were [504] purchased with unexplained funds.

Q. What were the total of those?

A. The total cost was this figure of \$1187.50.

Q. Of bonds you did not trace out as to where the money came from?

Mr. Strong: I object to that. That is not what the witness said.

The Court: He is asking him.

(Testimony of J. Bryant Eustice.)

Q. (By Mr. Robnett): Is that correct?

A. May I have the question again?

(The question referred to was read by the reporter, as set forth above.)

The Witness: In my tracing I determined that they didn't come from any known source.

Q. (By Mr. Robnett): Any known source of his, isn't that correct? A. That is correct.

Q. And the bonds were in the name of another party as well as in his name?

A. In his mother's name as well as his name.

Q. Nevertheless you couldn't trace out the known source but you just charged them up as his in increasing his assets to that extent? That is the way you increased that increase in assets to the amount you just testified, \$1187.50, isn't it? [505]

A. No, sir.

Q. It isn't?

A. If you leave out the word "just," I believe the answer would be yes.

Mr. Robnett: All right. Read the question, Mr. Reporter, and maybe I will leave it out.

(The question referred to was read by the reporter, as follows:

("Q. Nevertheless you couldn't trace out the known source but you just charged them up as his in increasing his assets to that extent? That is the way you increased that increase in assets to the amount you just testified, \$1187.50, isn't it?")

(Testimony of J. Bryant Eustice.)

Mr. Robnett: I will strike out the word "just" and take the witness' answer.

Q. You made no effort to determine whether his mother purchased those bonds herself or not, did you, those particular bonds?

A. Can I answer that by an explanation?

The Court: You can say whether you did or not. Did you or didn't you? Yes or no.

Q. (By Mr. Robnett): Just answer yes or no.

A. The answer would be no.

Mr. Strong: May the witness give his explanation? He [506] has indicated that that is not a complete answer.

Mr. Robnett: He didn't make any so I don't know how he can explain what he didn't do.

Mr. Strong: He answers a question as it is asked, your Honor.

The Court: He said he made no effort, so that's that.

Mr. Strong: But he has indicated he wants to explain it.

The Court: I do not think that requires any explanation.

Q. (By Mr. Robnett): Now as to all other bonds on that list of '42 that you have testified concerning, did you ever trace out to find out where the bonds came from, who purchased them?

A. That is the other bonds?

Q. Yes, the ones in '42.

A. Yes, I was able to determine where the funds came from to purchase the other bonds.

(Testimony of J. Bryant Eustice.)

The Court: You mean when you say you were able to determine that, you were able to reach an opinion to your satisfaction?

The Witness: Well, in this case by satisfaction on that was that they did not come from funds that represented income in the case of the other two bonds. They came from the taxpayer's personal bank accounts and those amounts were not taken into income.

Q. (By Mr. Robnett): Now if Mr. Ormont didn't pay [507] \$1187.50 on account of the purchase of some of those bonds, and if on the other hand his mother or someone for his mother besides he did pay that money and purchased the bonds, then to that extent would you not have to reduce in your comparative statement of net worth the amount that you have for bonds in 1942 in the sum of \$1187.50?

A. If the funds that purchased those bonds did not come from the taxpayer, or didn't have their origin in funds of the taxpayer, the answer would be yes, it would be reduced.

Q. You don't know that they did have their origin from the taxpayer's funds, do you?

A. Yes, I do. I believe the answer would be that I do know that the funds had their origin from the taxpayer. [508]

Q. I thought you testified awhile ago that you did not trace—did not know where the funds came from; that you could not find them?

(Testimony of J. Bryant Eustice.)

A. You would not allow me to explain my answer at that time. I would be glad to give my explanation now.

Q. But you answered my question, and said no, you did not know?

A. This question is worded differently.

Q. Now, Mr. Eustice, in your comparative statement of net worth, you did not at any time know, did you, of your own knowledge, how much cash Sam Ormont had on the 31st day of December, 1941, other than money in banks?

The Court: I think you asked him that awhile ago, and he said he did not know.

A. I believe I answered that question.

The Court: Isn't that correct?

The Witness: I believe that is correct, your Honor.

Q. (By Mr. Robnett): You do not, in your comparative statement, give any account for any cash he may have had at the beginning of 1942, that is, currency?

A. Yes, I have explained my reason for that, I believe.

Q. I understand, but you did not do it?

A. No, I did not give it.

Q. If he had any cash at that time that would have [509] reduced the increase in assets that you have shown on the exhibit, of whatever cash he may have had?

A. Yes, it would show as cash on hand at the beginning of 1942.

(Testimony of J. Bryant Eustice.)

Q. You also have an item, have you not, in your comparative statement, of a loan to Nolan Allen, of \$200, concerning which there was testimony yesterday? A. That is correct.

Q. Did you, in that statement, utilize that item of \$200 as an increase in assets?

A. No, I used it as a decrease in assets.

Q. And why?

A. Because when I looked at these two checks for \$100 each, drawn on the bank account 16-80, which was the bank account under the name of Nolan Allen, I had to make up my mind——

The Court: Which was drawn on the bank account?

The Witness: Bank. Did I say account? Excuse me.

The Court: Yes.

The Witness: I had to make up my mind—there were two ways to handle it: It was either unaccounted or unexplained income, or it represented money that was due the taxpayer. I gave the taxpayer the benefit of the doubt in this case, and did not include it in his income.

Mr. Robnett: We are grateful to you once.

The Witness: As he had been receiving money from Nolan Allen, the indications were that these checks came from the same bank, and I considered that possibly Nolan Allen did owe him \$200 at the beginning of the year. So I considered that was an asset that he had on hand, and as it is shown here, it is taken into account as a decrease in his assets.

(Testimony of J. Bryant Eustice.)

Q. In your examination you have testified, I believe, that you would check back over all the books and records and bank statements, and trace the checks out as to where they originated, or came from, in order to determine whether it was income, or was not income, is that correct?

A. That is correct.

Q. You did that in each and every instance or instances just as carefully as you did in other instances, did you?

A. So far as I know, the answer is yes.

Q. And you testified this morning that there was unaccountable, and therefore you claimed there was a tax due from the defendant on unaccountable income, in the aggregate amount of, I believe it was eight hundred and some dollars, which was constituted of a check for \$206.11, and checks for \$27.60, \$28.12, and some other small items. Do you know the items I refer to?

A. Yes, sir.

Q. Keeping in mind now the check for \$206.11, what do you show on that as to why that is charged as income [511] unaccounted?

A. I did not trace that check as having its origin in any of the taxpayer's known bank accounts.

Q. Where did you trace it as having its origin, if at all?

A. I didn't trace this particular check. I didn't trace every check that went into the taxpayer's bank account to their source. I did some of them. If I did, I would be doing it yet.

(Testimony of J. Bryant Eustice.)

Q. Some you did, and some you did not?

A. Yes.

The Court: He said if he did he would be doing it yet.

Q. (By Mr. Robnett): That you did not trace?

A. Yes. There were quite a few I did not trace. I traced a representative amount.

Q. How could you, not knowing the origin of this check, claim it was income, if you did not trace it to find out whether it was or was not?

A. I traced it. It did not come from any of the taxpayer's own sources.

Q. What do you mean, it did not come from any of the taxpayer's own sources?

A. Looking at the net worth statement, money he drew from any of his personal bank accounts. It was not in payment [512] of any of the loans that I could determine, and it was not drawn from his business bank account.

Q. Do you mean the Acme Meat Company's account?

A. The Acme Meat Company's account.

Q. You traced that out?

A. That's the indication I have here.

Q. You wouldn't make that indication there if you had not done it, would you?

A. If I hadn't made an effort to find it, no.

Mr. Robnett: I would like to have this marked as an exhibit, our next exhibit.

The Clerk: O.

(Testimony of J. Bryant Eustice.)

Mr. Robnett: And this one will be the next one.

The Clerk: P.

The Court: O and P—checks?

The Clerk: Yes.

(The documents referred to were marked Defendant Sam Ormont's Exhibits O and P for identification.)

Q. (By Mr. Robnett): I am going to show you Exhibit O, and ask you to look at that.

A. Yes, sir.

Q. Did you ever see that before?

A. It's quite possible that I have seen the check before, because it is a check drawn by the Acme Meat Company. [513]

Q. Dated what date? A. On May 11, 1942.

Q. To whom? A. Sam Ormont.

Q. How much? A. \$206.11.

Q. Endorsed by Sam Ormont, isn't it?

A. That is correct.

Q. Marked paid by the bank?

A. Marked paid by the bank.

The Court: Perforated?

The Witness: Yes, sir.

Q. (By Mr. Robnett): That corresponds with the item that you have charged up as unexplained income, of that amount, that you have just testified to, doesn't it?

A. It appears that it does, yes.

Q. Now, I show you Exhibit P. I offer check O in evidence.

(Testimony of J. Bryant Eustice.)

Mr. Strong: No objection.

The Court: Admitted.

(The document referred to was marked Defendant Sam Ormont's Exhibit O and was received in evidence.)

Q. (By Mr. Robnett): Did you ever see that before? [514]

A. It is quite possible I have. The check is drawn on Sam Ormont's personal bank account.

Q. What date? A. On May 11, 1942.

Q. To whom?

A. It looks like Arthur P-a-c-h-i-o.

Q. For how much money? A. \$206.11.

Q. Signed by Sam Ormont, isn't it?

A. Signed by Sam Ormont.

Q. How is it endorsed?

A. By Arthur—the same name that appears—

Q. On the Check? A. Of the payee, yes.

Q. It shows it is marked paid by the bank, with a perforated payment stamp?

A. That is correct.

The Court: Is that Sam Ormont's personal account?

A. Sam Ormont's personal account.

Q. (By Mr. Robnett): On the Security First National Bank, Los Angeles?

A. That is correct.

The Court: That is the same bank account that you had reference to in your testimony? [515]

A. That's the personal bank account.

(Testimony of J. Bryant Eustice.)

Mr. Robnett: I offer that in evidence.

The Court: Admitted.

Mr. Strong: No objection.

The Court: It is already admitted.

(The document referred to was marked as Defendant Sam Ormont's Exhibit P and was received in evidence.)

Q. (By Mr. Robnett): Now, Mr. Eustice, that you have seen these two checks just shown you, Exhibits O and P, I will ask you if, as a matter of fact, those items do not show absolutely to you that the item of \$206.11 which you testified about this morning as being unexplained, and therefore charged as income, was not income?

A. That is correct. If I had observed the situation as it was that would possibly be \$206.11 less, and that would not have been taken into income.

Q. Now you also audited, did you not, the income tax return of Sam Ormont for 1943?

A. Yes, sir.

Q. And in doing so——

The Court: Just a moment. Where did you drop this \$206.11 in your calculations, in income not reported?

The Witness: That is correct; yes, sir.

Q. (By Mr. Robnett): That is one of the items—to go back to that—that is one of the items that you had claimed and testified here was unaccounted for income?

The Court: That made up the item of \$3359.22?

(Testimony of J. Bryant Eustice.)

The Witness: Yes, it is included in that total item.

Q. (By Mr. Robnett): Now as to the 1943 income tax report of Sam Ormont, on the face of that report did you make any different calculations as to those things that were reported than the figures and calculations made on the return that was filed?

Mr. Strong: That is ambiguous. I don't know whether he is asking as to the process or the particular items. I object to that.

The Court: Read the question.

(The question referred to was read by the reporter as set forth above.)

The Court: Objection overruled. [517]

The Witness: If I understand the question, it is whether there was any increase in income over the return filed.

Mr. Robnett: No.

Q. In the first instance, I want to know—I think you claim that there was unaccounted for income—but I want to know whether or not you calculated the income that was reported any differently than it was on the return.

The Court: In other words, if there was any claimed error on the face of the return?

Mr. Robnett: That is right.

The Court: In other words, did you shift the salary around in this one like you did in the other one?

(Testimony of J. Bryant Eustice.)

The Witness: Yes. There was \$650 of salary.

Q. (By Mr. Robnett): That is the first item, isn't it?

A. Yes, changed from salary to income from partnership.

Q. You did exactly the same thing on that item that you did on the \$5200 item in the 1942 return, didn't you? A. Exactly the same thing.

Q. Now were there any other changes you made on the figures as given on the return?

A. That was all. I made increases in the other figures that were on the return in my adjustments.

Q. I am only speaking—— [518]

A. There is no other switches like this.

Q. You made increases by reason of what you claimed to be unreported income, is that what you mean? A. That is correct; yes, sir.

Q. You didn't make any increases or changes here that would increase his tax substantially on the items as he accounted for them, did you?

A. I can't say that I understand that question clearly.

Mr. Robnett: Will you read the question?

(The question referred to was read by the reporter as set forth above.)

The Witness: I think that is exactly what I have done on some of these returns.

The Court: He means on the face of the return other than the \$650.

The Witness: No.

(Testimony of J. Bryant Eustice.)

The Court: That wouldn't increase it substantially?

The Witness: That is correct, your Honor.

Q. (By Mr. Robnett): Now you say that you claim that Mr. Ormont had income that was not reported on this 1943 income and which was claimed was taxable income that is unreported, as you claim?

A. That is correct.

Q. In this report appears—have you it before you?

A. Yes, I have the copy of my adjustments here.

The Court: Do you mean you want the return?

Mr. Robnett: Yes.

The Witness: I haven't the return; no.

Mr. Robnett: It is Exhibit 2, I believe.

The Court: Here it is.

(The document referred to was passed to the witness.)

Q. (By Mr. Robnett): What was the total income reported by Sam Ormont for the year 1942?

A. 1943?

Q. 1943, yes—pardon me.

A. Total income reported on the return was \$12,544.67.

Q. Now will you give me the items that you claim should have been included in that report and which you also claim were not as income?

A. Yes. The first adjustment was for dividends, \$33.75.

Q. While on that subject, where did you claim that dividend came from?

(Testimony of J. Bryant Eustice.)

A. From dividends on stock owned and that was in possession for him at Merrill Lynch, Pierce, Fenner & Beane.

Q. If I recall your testimony, you did that because you say that on their books they had credited him with \$33.75 as dividends?

A. That is correct. [520]

Q. Is that correct? A. Yes, sir.

Q. You had no evidence to show that he, Sam Ormont, ever collected that \$33.75 from that concern, did you? A. Yes, sir, I had.

Q. When did he collect it? A. In 1945.

Q. The return of 1943 made by Sam Ormont, does that show that it is made on an accrual basis or a cash basis?

A. It says here it is made on a cash basis.

Q. In your investigation and in your final report and analysis and calculations, how did you calculate his 1943 tax, on an accrual basis or on a cash basis?

A. It was accrual as to his business.

Q. As to what business? The Acme Meat Company?

A. The Acme Meat Company; yes, sir.

Q. And as to his personal income, was it on a cash or accrual basis?

A. It apparently—that is, it states here it was on a cash basis. That is the way it could be considered, that he was reporting income of his business on an accrual basis and he could be reporting the other income on a cash basis. It is not property indicated on the return.

(Testimony of J. Bryant Eustice.)

Q. I am not asking you about the return; I am asking you how you calculated it and how you reported it on your [521] final report.

A. As being on an accrual basis.

Q. The entire thing, did you, that is, both his business, the Acme Meat Company, and likewise Sam Ormont's personal income?

A. Well, I state this, that it didn't make any difference on these items either way.

Q. It what?

A. It didn't make any difference regarding the amounts taken into income, whether he was on a cash or an accrual basis.

The Court: That isn't the question. That is the thing we have to decide, Mr. Witness.

Mr. Robnett: I move to strike the answer.

The Court: How did you calculate it, on an accrual basis for his personal income?

The Witness: Well, I believe on a cash basis, we will say.

The Court: You made all your calculations then on a cash basis for Sam Ormont individually?

The Witness: Yes. I will state that the individual was on a cash basis.

Q. (By Mr. Robnett): What does your Exhibit 40 show as to how that stock—may I have those exhibits—I will ask you to examine [522] Exhibit 26 in this case and tell me whether or not that is the transaction upon which there was that dividend credited that you have charged up against Mr. Ormont for 1943.

(Testimony of J. Bryant Eustice.)

A. Well, that is \$30 of it was dividends from this item here, Standard Brands.

Q. Yes.

A. Then he purchased other stock. He had 15 shares of Socony-Vacuum Oil Company, from which he received dividends of \$7.50.

The Court: Were they paid to him or credited to his account?

The Witness: They were credited to his account.

Q. (By Mr. Robnett): Now what I am getting at is, was that account and that stock carried in the name of Sam Ormont individually or was it in the name of the Acme Meat Company?

A. In the name of Sam S. Ormont, it says.

Q. And you calculated all Sam Ormont's personal business, as distinguished from the Acme Meat Company business, on the cash basis, didn't you?

A. I so stated.

Q. And I believe you have also stated that none of that \$33.75—is that the total dividend that you stated?

A. \$33.75.

Q. That that money was not received by Sam Ormont [523] until some time in 1945?

A. That is correct. It was constructively received by him in 1943.

Mr. Robnett: I move to strike out the answer.

The Court: It may be stricken.

Mr. Strong: May the witness explain why he took that in for that year?

The Court: The witness doesn't have to make an explanation of what the law is. It is up to me

(Testimony of J. Bryant Eustice.)

to decide whether or not it was constructively received, and for the jury to decide whether he actually received it or not, and if so beyond a reasonable doubt and wilfully concealed it. The witness cannot testify as to what the law is. It is a rank conclusion.

Mr. Strong: I thought he was testifying as to why he took it in for the year 1942.

Mr. Robnett: No.

The Court: He answered the question. The jury are instructed to disregard the witness' statement that it was constructively received.

Q. (By Mr. Robnett): Let's take up the next item that you claim was not accounted for income in 1943.

The Court: By that token, Mr. Witness, would people constructively receive their dividends on their war bonds [524] each year as they increased in value?

The Witness: They can report it that way. It has been made optional. That is my interpretation by reading the law on it.

The Court: Whether they cash it in or not?

The Witness: Yes. They can report it as income each year or wait until they cash in the bonds.

Q. (By Mr. Robnett): There is a special provision, is there not, as to Government obligations in that regard?

(Testimony of J. Bryant Eustice.)

Mr. Strong: Is that a question as to law, your Honor?

The Court: Your objection is good. It will be sustained.

Q. (By Mr. Robnett): Let's take up the next item——

The Court: Before you go to the next item, I see it is 12:00 o'clock. We will recess until 2:00 o'clock. Remember the admonition.

Mr. Strong: Your Honor, tomorrow is a holiday——

The Court: That is right. There will be no court tomorrow and when we recess tonight we will recess until 2:00 o'clock Monday afternoon. So you can make your plans accordingly.

Mr. Strong: Thank you.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m. of the same date.) [525]

Los Angeles, California, Thursday, May 29, 1947
2:00 P.M.

The Court: United States vs. Ormont and Himelfarb. The usual stipulation, I take it?

Mr. Strong: Yes, your Honor.

Mr. Katz: Yes.

Mr. Robnett: So stipulated.

The Court: Mr. Eustice.

J. BRYANT EUSTICE

the witness on the stand at the time of adjournment, having been previously duly sworn, resumed the stand and testified as follows:

Cross-Examination

(Continued)

By Mr. Robnett:

Q. Mr. Eustice, I want to refer back to 1942; and referring to your summary for convenience, to the second item of \$37.50—do you find it?

A. Yes, sir.

Q. That item is called "Dividends," isn't it?

A. That's correct, yes, sir.

Q. Where did that come from?

A. That's from dividends on stock owned by the taxpayer, and held for his account by Merrill Lynch, Pierce, Fenner & Beane.

Q. The same situation as to that as was to the item of [529] \$33.75, dividend testified to this morning, was it? A. Yes, sir.

Q. That is to say, it was with the same company, and merely a credit to his account with them? There was no payment in 1942, was there?

A. The same condition. He received a statement from them of his account showing that the dividends were credited to his account.

The Court: He did not draw any money down in 1942?

A. He did not draw any money down in 1942.

Q. (By Mr. Robnett): The money was not drawn until 1945, was it?

A. It was not drawn until 1945, no, sir.

(Testimony of J. Bryant Eustice.)

Q. Let us take up the third item, the second portion of the third item, interest, \$135.18. How and where was that item made up?

A. That interest on savings bank deposits.

Q. In what bank? Have you the number of the account there?

A. I can tell very shortly. \$57.50 went to the savings account at the Security First National Bank; \$77.68 to the Bank of America Savings account.

Q. Seventy-seven and how much?

A. .68.

Q. And what was the other item, please? [530]

A. \$57.50.

Q. \$57.50. Was that all one item, or was it made up of more than one item, that \$57.50?

A. Well, I would like to refer to the account. Usually interest credits are made twice a year, June 30th and the end of December. If it is material I can look it up.

Q. Will you kindly refer to your exhibit there, and look it up?

A. Yes, \$27.75 credited June 30, 1942.

Q. \$27.55?

A. \$27.75. And \$29.75 was credited December 31, 1942.

Q. That makes the \$57.50? A. Yes, sir.

Q. Did you break down the other item, the 77 plus that you testified to?

A. \$30.87 credited on June 30, 1942; and \$46.79 on December 31, 1942. [531]

(Testimony of J. Bryant Eustice.)

Q. That was the total of that bank account?

A. That is correct.

Q. Now going back to 1943, you testified, I believe, on direct examination that you took into account in figuring that Mr. Ormont, in your opinion, had some income that was not accounted for and that was taxable income for the year 1943, certain bonds and bond purchases, did you?

A. That is correct.

Q. Now will you refer to your bond record, or whatever you may need to there, and tell me how many bonds you show that he had in the beginning of 1943?

A. That is the total cost price of the bond?

Q. Yes, the cost price. A. \$45,187.50.

Q. That was the amount at the beginning of the year 1943, was it? A. That is correct.

Q. How many bonds did you show that he had at the end of 1943? A. \$96,662.50.

Q. 96 what? A. \$96,662.50.

Q. Or a differential or an increase of \$51,000 plus, was it? A. \$51,475. [532]

Q. Do you have before you, and did you have when you made the calculations, a list of the bonds that you took into account when you made your calculations?

A. Yes, I had a list of the inventory of the bonds.

Q. As to which list, did you make it?

A. No, I did not make that list.

(Testimony of J. Bryant Eustice.)

Q. Did you check the bonds?

A. No, sir. The answer is the same as I made before. I did not check the bonds.

Q. And you never saw the bonds then yourself? A. I never saw the bonds.

Q. But you based it entirely upon the record that you have before you as to the serial number, the dates purchased and who purchased them, whose names they were in and the amount paid for them, did you?

A. I based it on a list that was given to me; yes.

Q. Now on that record, I will ask you if, as a matter of fact, it doesn't show that all of those bonds purchased in 1943 were purchased in two names.

A. They were purchased in two names; not always the same two names.

Q. I understand. But I am asking you if they don't show that they were all purchased in two names. A. Yes, sir.

Q. The defendant, in other words, was *only of* the purchasers [533] or one of the persons named as purchaser in the bond, or payee in the bond, isn't that correct?

A. Yes, that is correct.

Q. Will you give me the serial numbers, if you have them, the date of purchase and the amount paid for the bond or bonds purchased on such dates in 1943 as you had before you when you were making the calculations?

A. That is for each and every bond purchased in 1943?

(Testimony of J. Bryant Eustice.)

Q. Yes, and the kind of a bond.

A. On January 18, 1943, he purchased seven \$1000 Series G bonds, Numbers——

Q. Is that all of that item?

A. This all applies to this one item.

Q. I don't want to stop you. Has that finished that item of those seven bonds?

A. Well, I was giving you the serial numbers of them.

Q. All right.

The Court: You say he purchased. You mean they were purchased in his name and some other person's name?

The Witness: Yes. The defendant said that these were his bonds when I discussed the matter of the bonds with him.

The Court: He did?

The Witness: Yes, sir.

The Court: What names are those in?

The Witness: Most of the bonds are in the name—— [534]

The Court: No, those seven.

The Witness: These are in the name of Sam Ormont or Mrs. Dora Goldberg.

Q. (By Mr. Robnett): Those seven are?

A. Yes.

Q. Will you kindly give the serial number and then take each item of bonds thereafter giving the serial number, the date, the amount and the names of the persons in the bonds as shown by your memoranda?

(Testimony of J. Bryant Eustice.)

A. To continue where I left off, the serial number was 1172475G to '81. The bond was in the name of Sam Ormont or Mrs. Dora Goldberg.

On February 15, 1943 he purchased one \$1000, Serial No. M3636561E. That was also in the name of Sam Ormont or Mrs. Dora Goldberg.

On February 17, 1943 he purchased one \$1000 bond No. M3572394E. This bond was in the name of Sam Ormont or Mrs. Sue Kosdon.

On April 12, 1943, one \$1000, M1282364G. It was in the name of Sam Ormont or Mrs. Dora Goldberg.

All of the following bonds are also in the name of Sam Ormont and Dora Goldberg if that is satisfactory so I won't keep repeating it.

Q. All right. Very well. [535]

A. On April 22, 1943 he purchased one \$1000 bond No. M1330102G.

On May 5, 1943 he purchased ten \$1000, Nos. M1453077G to '86. I wasn't quite accurate as to that. There is one of these bonds, which is No. 105307G, which was in the name of Sam Ormont only.

On June 5, 1943 he purchased one \$1000 bond, M1346604G.

On June 25, 1943 he purchased one \$1000 bond No. M5344308E.

On June 26, 1943 he purchased one \$1000 bond No. M1515836G.

On July 21, 1943 he purchased eight \$1000 bonds Nos. M163202010G to '13 and M 1632015G to '17, and M1632061G.

(Testimony of J. Bryant Eustice.)

On September 2, 1943 he purchased two \$5000 bonds, Nos. V264323G and '24.

On 9-2-43, four \$1000 bonds, Nos M1617636G to '39.

On September 15, 1943, three \$100 bonds, Nos. C44563337E to '39.

On September 29, 1943 one \$1000 bonds, No. 2031593G.

On December 14, 1943, five \$1000 bonds, Nos. M2129438G to '42.

That makes a total of \$51,475 at cost. [536]

Q. All right. Did you check against the bank accounts both of Mr. Ormont and of the Acme Meat Company, to determine whether any of the money that was used to purchase any of these bonds may have come from either of those accounts, from his bank accounts or the Acme Meat Company account?

A. Yes, some of the funds came from the Acme Meat Company; some came from his personal bank accounts.

Q. Can you give dates and items that you determined, in your mind, were the checks, or the withdrawals, from the bank accounts of the money that went into any of those bonds? A. Yes, sir.

Q. All right, if you will do that, please.

A. On the bonds purchased January 18th, 1943, \$7000 was paid for, \$5000 by check 336, from the Acme Meat Company. The source of the other \$2000 was unexplained.

The Court: You mean you couldn't trace it?

(Testimony of J. Bryant Eustice.)

The Witness: I couldn't trace it, or it was not explained to me by the taxpayer, or defendant. There were no book records, of course, on those items.

Q. (By Mr. Robnett): As to the \$5,000, the reason you say that that went into it, was that the check was made payable to the seller of the bonds, or was that check made payable to someone else, the \$5000 Acme Meat Company check?

A. I would say that I have an answer, or have a record [537] here. It was a withdrawal, on January 8, 1943, from the business.

Q. From what?

A. From his business account.

The Court: Do you mean from the Acme Meat Company?

The Witness: From the Acme Meat Company, yes.

Q. Who was the check payable to?

A. The check apparently was either cashed, or he may have received a cashier's check. We can't always tell by looking at the check, just what happens to it.

Q. Who was it payable to?

A. Your Honor, I don't have a record here on it. It must have been payable to cash, or to himself.

Q. You don't know?

A. Because he cashed the check at the bank. I have a notation in my work paper that the check was cashed at the Bank of America, Brooklyn.

(Testimony of J. Bryant Eustice.)

Q. (By Mr. Robnett): The next purchase that was made of bonds?

The Court: That was the \$7000 purchase?

Mr. Robnett: Yes.

A. \$7000; in other words, it was made around those dates, and he drew \$5000. It could have been used for the purchase of that particular bond.

The Court: It could have been used for that?

The Witness: It could have been used for that, so it was not taken into income.

Q. (By Mr. Robnett): Did you examine the books of the Acme Meat Company in connection with that alleged \$5000 check?

A. Yes, I examined that; it was charged to the defendant's capital account.

The Court: Did you see the check?

The Witness: It was charged on the books of the Acme. Yes, your Honor, I saw the check.

Q. (By Mr. Robnett): It was charged to his capital account? A. That is correct.

Q. Take up the next one that you have described, and tell us where the funds came from, as you calculated it, for that purchase.

A. I calculated the next one, it was drawn February 15, 1943, as coming from——

The Court: What does that total?

The Witness: \$750, as unexplained funds.

The Court: You couldn't trace it?

The Witness: That's right, and the taxpayer couldn't explain it.

The Court: Are they bonds in the name of Kosdon?

(Testimony of J. Bryant Eustice.)

The Witness: No, this was in the name of Samuel Ormont [539] and Mrs. Dora Goldberg.

Q. (By Mr. Robnett): So you charged that up as Mr. Ormont's? A. As additional income.

Q. Yes. Notwithstanding your record did show that there was another name as owner of the bond, with Mr. Sam Ormont? A. That's correct.

Q. And you did not have anything that showed anything from Sam Ormont as having been used to pay for it, isn't that correct?

A. That is correct, yes, sir.

Q. The next one?

A. The next was a thousand dollar bond purchased February 17, 1943. This was a bond that was in the name of Sam Ormont, or Sue Kosdon. That was a check drawn on the defendant's commercial bank account at the Security First National Bank in Huntington Park, dated 2-1-43.

Q. How much was the check? A. \$750.

Q. I thought you said that was a thousand dollar bond.

A. That was the face value of the bond, and the cost is \$750.

Q. I want the amount of cost. You say that check that you claim was the check that was paid for that bond, was dated [540] February 1st, 1943?

A. Yes, sir, the check was made payable to Benjamin Kosdon. I questioned the defendant on this. He stated that that was for the purchase of a bond, which ties in with the date. The only bond purchased around that date was on February 17, 1943.

(Testimony of J. Bryant Eustice.)

I couldn't be sure that it was, but he stated that it was, so I didn't take it into income.

Q. The defendant stated to you that that was for the purchase of this bond or a bond?

A. The purchase of a bond.

Q. Didn't he also, in that same statement, tell you that that was a loan to Benjamin Kosdon, or to Benjamin Kosdon and his wife Sus Kosdon?

A. He may have. At one time, I notice I have the word "Loan" written down on my work papers here. But I find there, apparently from subsequent conversations, I have changed that and considered it as a payment on this bond. In either case, it would not have been taken into income, and was not taken into income.

Mr. Robnett: I move to strike out what the witness says apparently by subsequent conversations.

Mr. Strong: I will agree to those words going out.

The Court: Strike. When you say it was not taken into account, you took them all into account, didn't you?

The Witness: No, only—that is, I considered as income, [541] only the items that came from unexplained sources; with checks drawn on the Acme Meat Company, or on the taxpayer's personal bank account, that part of the payments was not taken into income, but where I couldn't trace the source of the funds, and they could not be explained by the taxpayer, I considered it as cash from unexplained sources, and took that amount into income.

(Testimony of J. Bryant Eustice.)

So some of these cases, I might explain further, that they could not be definitely identified, like this \$5000 item. It's another case of not stating that the \$5000 bond, or the \$7000 represented income, but I gave the taxpayer the benefit of the doubt, as the \$5000 could have been used for the purchase of this bond, or the bond could have been purchased with this \$5000.

Q. (By Mr. Robnett): Let me understand. Did you not, in 1943, do as you did in 1942—compute and use what you call the comparative statement of net worth? A. That is correct.

Q. And in connection with that take into consideration all of these bonds that you have already described as having been purchased, according to your claim, by the defendant in 1943, and aggregating the sum of \$51,475?

A. The only part of that item that was taken into consideration as income was \$14,084.76. The other part of it [542] represented, although it shows a net worth payment as an increase in United States Government Bonds, it is also represented as a decrease in the taxpayer's bank account. One offsets the other. [543]

Q. Therefore you claim that he could not or did not change, or particularly did not increase, the assets of the defendant as you set them forth in your statement for 1943?

A. It increased it as far as taxable income was concerned to the extent of \$14,084.76.

(Testimony of J. Bryant Eustice.)

Q. This particular bond purchased here which you say was \$750, did that in any particular increase the alleged assets of the defendant as per your statement of 1943?

A. Can I have the question again?

(The question referred to was read by the reporter as set forth above.)

The Witness: It increased his assets as to Government bonds and decreased his bank account by exactly the same amount. No net increase in his net worth.

Q. (By Mr. Robnett): Did it in any way change the taxable income for the defendant for the year 1943?

A. In no way whatever.

Q. If, as a matter of fact, that bond was not, the defendant's bond, if it was not his bond then would that fact not change the statement as to his net assets or his increase of assets?

A. No, sir. If he loaned the money to Mrs. Kosdon it would show up on the net worth statement as a loan instead of as a Government bond, exactly the same effect. [544]

The Court: Suppose that that wasn't his money, that it was somebody else's money that bought it.

The Witness: If it was somebody else's money that bought the bond——

The Court: Suppose it was Sue Kosdon's money, the name on the bond, suppose she bought the bond and put his name on it, then you wouldn't have that \$51,475 increase in bonds, would you?

(Testimony of J. Bryant Eustice.)

The Witness: No, but we would have had the defendant writing a check for \$750 which would have to be accounted for in some other manner.

The Court: Suppose he bet it on the horses, it wouldn't make any difference.

The Witness: On his net worth statement it would be added to his personal expenses and increased his personal expenses.

The Court: It wouldn't increase his income, would it?

The Witness: It wouldn't increase his income; it didn't increase his income in any way.

The Court: But if it belonged to somebody else and you added \$750 worth of bonds in here that actually were bought by somebody else that would decrease his income, wouldn't it?

The Witness: I am just trying to see if I understand the question, your Honor.

The Court: Suppose you added \$1000 worth of my bonds [545] in here and you shouldn't have done it, wouldn't that increase his income?

The Witness: I didn't compute his income by the net worth statement. I only used the net worth statement to prove the income that I had previously computed, and of course if there was some other transaction that took place here, well I would have to take it into account in some other way.

The Court: If the bonds belonged to somebody else, why then this would have been your net worth or your net taxable income that you show here, but it would be reduced by the amount of bonds, wouldn't it?

(Testimony of J. Bryant Eustice.)

The Witness: If it belonged to somebody else I would reduce the taxpayer's Government bonds by \$750. But then if the \$750 was for a loan I would add the \$750 in place of that.

The Court: Forget the \$750. Just if you put a bond in there that didn't belong to him.

The Witness: If I had any bonds in here that didn't belong to him it would reduce that figure.

The Court: And also reduce what you assert to be the net taxable income?

The Witness: It would change this statement which I used to prove this net taxable income. That is, my computation of it.

The Court: All right.

The Witness: That is, the net worth statement is simply [545] a proof of the computations that I had made by tracing income from unknown sources or that could not be explained by the defendant.

Q. (By Mr. Robnett): And if that net worth statement were different than it is, if you took off of there, in other words, \$750 off of bonds because the bond belonged to someone else and was purchased by somebody else with their own money, then it would change this statement, wouldn't it, and it wouldn't prove your other calculations as to income?

A. You understand that in handling this particular item I asked the taxpayer——

Q. Do you understand the question?

The Court: Don't argue the question, Mr. Witness. You try and answer the question. Mr.

(Testimony of J. Bryant Eustice.)

Strong at the appropriate time will make the argument.

The Witness: I will try to answer it even though it probably doesn't properly explain the question.

The Court: That is up to the lawyer to argue his case to the jury. The witness doesn't have to.

Q. (By Mr. Robnett): In order to prove your contention of the income of the defendant, you used, you say, this comparative statement of net worth? A. Yes, sir. [547]

Q. Now in using that as proof, did you accept it as proof if it varied from what you contended was the income, or did you accept it as proof if it compared with the net income that you contended?

A. It actually compared with the net income that I computed.

Q. Yes.

The Court: Taking all your other assumptions as correct? In other words, to do that you have to assume, for instance, that the \$750 was either a loan or spent in personal living or something else?

The Witness: I didn't make an assumption, your Honor, on that. It was what the taxpayer told me. He told me this money was used to buy a bond. He told me that all of these bonds belonged to him. I have no other method then of determining or making my computations. If it is a different condition I will be glad to admit any effect that it may have had on his income.

Q. (By Mr. Robnett): I am trying to find out if it wouldn't really disprove your calculations if,

(Testimony of J. Bryant Eustice.)

as a matter of fact, a bond that had cost \$750 and which you have in your net statement here as belonging to Mr. Ormont never belonged to him and he never paid for it, isn't it a fact that that would affect the proof of your income? [548]

A. No, sir.

Q. It wouldn't bother it at all?

A. No, I still have the \$750 to account for some place or other. If it doesn't belong as a purchase of a bond then it belongs some place else. It wasn't what the taxpayer told me he used the money for some other place, and until I know what he used the money for I don't know where to place it on his net worth statement.

Q. That particular money, did it come out of his personal account or the Acme Meat Company?

A. It came out of his personal account.

Q. And you didn't try to trace it any further than after he told you what it was used for?

A. That is correct. It was not taken into income. He drew \$750, he purchased a bond around the same date, so I didn't take it into income but I assumed he could have used that \$750 to purchase a bond.

Q. Then there you used his statement as to what was done with that money, didn't you, in making your calculations?

A. In this instance, yes, sir, with evidence of a check that was actually drawn on that date.

The Court: Who did you say the check was drawn to?

(Testimony of J. Bryant Eustice.)

The Witness: Benjamin Kosdon, I believe.

Q. (By Mr. Robnett): And it was drawn, was it not, on February 1, 1943? [549]

A. Yes, sir.

Q. Now as to some of the other bonds, isn't it a fact that you were told by Mr. Ormont that some of those bonds were purchased with money that belonged to his mother?

A. I don't recall that Mr. Ormont ever told me that; no, sir.

Q. He never told you that at all?

A. No, sir. He would hardly do that considering that he claimed his mother as a dependent on the income tax return.

Q. All right. Well, then, we will take the rest of the items and you will proceed with them, please, as to which ones you charge up as being income, taking each bond. Let's find out what you charged it as.

A. You want a continuation?

Q. Yes. The last one was February 17, \$1000, for which \$750 was the purchase price.

A. On April 12, 1943 he purchased another bond for \$1000, unexplained funds.

Q. Are you giving the cost of the bond this time or are you giving the face of the bond?

A. This is the cost of the bond. It is a G bond.

Q. All right.

A. This item was taken into income.

Q. That was April 12th, was it?

A. Yes, sir. [550]

(Testimony of J. Bryant Eustice.)

Q. What is the next one?

A. April 22 he purchased another G bond, cost of \$1000, unexplained funds.

The Court: You mean you couldn't trace the funds?

The Witness: That is correct, your Honor. I could account for all of these funds and none of them were used for this purpose.

Q. (By Mr. Robnett): That last item was April 22nd or May 22nd? A. April 22nd.

Q. That is the way you have it on your records?

A. Yes, sir.

Q. Who does it show purchased that bond?

A. The bonds were purchased at the Federal Reserve Bank at San Francisco, or issued by the Federal Reserve Bank in San Francisco. The bonds are in the name of Sam Ormont or Mrs. Dora Goldberg.

Q. It does not show who did the purchasing, aside from that, does it?

A. No, sir. I would hardly have any way of determining that.

Q. You say that was furnished from the Federal Reserve Bank in San Francisco?

A. Yes, it was issued by the Federal Reserve Bank of San Francisco. [551]

Q. That was a Series G bond?

A. It was a Series G bond; yes.

Q. Will you look there again and see if on May 22, 1943 you have the purchase of any bond by Dora Goldberg? A. May 22nd?

(Testimony of J. Bryant Eustice.)

Q. Yes.

A. I believe there were some bonds purchased on the list that was given to me. I will see if I have a record of them here. They weren't taken into account as income of the taxpayer.

Mr. Strong: Here is another list, your Honor. May the witness have it?

The Court: Is that part of your exhibit?

Mr. Strong: That is No. 42.

(The document referred to was passed to the witness.)

The Witness: I don't seem to find any.

Q. (By Mr. Robnett): You don't find any other or any bond at all in the name of Dora Goldberg that is dated on or about May 22, 1943?

A. No, I do not.

Q. Now you do find on the ones that you used in figuring Mr. Ormont's income tax for '43, you do find that is on your paper and under the date of April 22, 1943, don't you?

A. I have a bond here, April 25, 1943.

Q. You testified a while ago about one—— [552]

A. I beg your pardon. That is correct, April 22nd.

Q. You did not make that list that you have before you, did you? I understood you didn't.

A. I copied this from the other list that was presented to me by Mr. Phoebus.

Q. And you of course do not know whether that date could be wrong or not?

(Testimony of J. Bryant Eustice.)

Mr. Strong: May we have that list identified? It has a number, your Honor.

The Court: What list are you looking at?

The Witness: (Exhibiting document.)

Mr. Strong: No. 42.

Mr. Robnett: I would like to have this marked as an exhibit next in order.

The Clerk: Q.

(The document referred to was marked Defendants' Exhibit Q for identification.)

Q. (By Mr. Robnett): On the bond as shown in your list of April 22, 1943 the names on that as you have it are Dora Goldberg as well as Sam Ormont?

A. Sam Ormont of Mrs. Dora Goldberg is the way I have it.

Q. That is a Series G bond that was purchased from the Federal Reserve Bank at San Francisco?

A. That is correct.

Q. I show you Exhibit Q, which is a customer's copy, I believe—it is very faint, the lead pencil writing on it. A. It is indeed.

Q. And you will note here it looks like a 5-22-43, doesn't it? A. Yes, sir.

Q. And the signature of the purchaser is Dora Goldberg there, isn't it? A. Yes, sir.

Q. That is for \$1000 bond of Series G, isn't it?

A. I can't read it.

Q. Well, there is a figure here in front of the item, isn't there?

A. It could very well be here but I can't distinguish it.

(Testimony of J. Bryant Eustice.)

Q. That states at the top that it is an application for a United States war savings bond, Series G, 12-year interest bearing bond, to Federal Reserve Bank of San Francisco, San Francisco, California, doesn't it? A. That is correct.

Mr. Robnett: I am going to offer this in evidence, if the Court please.

Mr. Strong: No objection.

The Court: Admitted. [554]

(The document referred to was received in evidence and marked Defendants' Exhibit Q).

Q. The memorandum receipt, is that not dated 5-22-43? Is that correct? Apparently that is the date. A. It looks like 5-22-43.

Q. And doesn't show the signature of the person receipting for it as Sue Kosdon?

A. It looks like the name Sue Kosdon on there. I can read part of it.

The Court: And across it is: Delivered to 4 something Cornwall Street?

A. That's the defendant's address.

Q. Cornwall Street?

A. I believe that is, as shown on the income tax return.

Q. And also Dora Goldberg's address?

A. 407 North Cornwall Street.

Q. That is also Dora Goldberg's address?

A. Yes, your Honor.

Q. Is that Sue Kosdon's address, do you know?

A. That is Sue Kosdon's husband standing up there.

(Testimony of J. Bryant Eustice.)

Mr. Robnett: No, it isn't your Honor.

The Court: Sue Kosdon, do you know if she is any relationship to the defendant?

The Witness: I understand she is a sister of the defendant.

The Court: By the way, the jury is instructed to disregard the remark made by the witness a short time ago, when [556] counsel asked him if he had ever had a conversation with the defendant, and he said his mother bought the bonds, and he said he hardly would have claimed that, because he claims her as his dependent;—the jury is instructed that that statement is purely speculative on the part of the witness, and is a conclusion as to what the law is or is not, and that is not for him to decide, and has no place in this case.

Mr. Robnett: I move that it be stricken.

The Court: It is already stricken. I struck it on my own motion.

Q. (By Mr. Robnett): Let us proceed now to the next bond.

A. The next bond was purchased on May 5, 1943, 10 \$1000 bonds, G bonds; cost \$10,000, were purchased by check drawn by the taxpayer on his commercial account at the Security First National Bank, for \$8,147.73, and cash of \$1852.27. The \$8,147.73 was not considered as income in my report. The \$1852.27 cash used was considered as income, unexplained funds.

The Court: I do not understand your statement. You say he bought \$10,000 worth of bonds?

The Witness: Yes, your Honor.

(Testimony of J. Bryant Eustice.)

The Court: And used \$16,000 to buy them?

The Witness: No, a check on his commercial account for \$8,147.73, and cash of \$1852.27.

The Court: Cash \$1852.27? [557]

The Witness: Yes.

The Court: I thought you said \$8,000 cash. What name were they in?

The Witness: The name of Sam Ormont or Mrs. Dora Goldberg.

Q. (By Mr. Robnett): What is your next purchase?

A. On January 5, 1943, he purchased one \$1000 bond, which I considered as unexplained funds. It was not traceable to any known source.

Q. What was the cost of that? A. \$1000.

Q. You did not trace out any check or checks for that? A. That is correct.

Q. And merely because you could not so trace it you charged it up to him? A. No, sir.

Q. How is that? A. The answer is no.

Q. What other reason did you have?

A. On January 1st, 1943 the taxpayer had \$24,-024.62 in his personal bank accounts. The taxpayer drew \$12,296.03 from the Acme Meat Company. Of this, he purchased \$12,042.82. He deposited that in his personal bank accounts. He had left, presumably for personal expenses, \$253.21. He received a check for interest on Government bonds of \$387.50. He [558] deposited \$125 in his bank account. He had cashed the checks, \$262.50. He received interest

(Testimony of J. Bryant Eustice.)

checks from Sam and Ben Borne of \$105, which he deposited in his bank account; interest on savings account——

The Court: All that was the reason why this check is unexplained?

A. Yes, the reason is, I have accounted for all of his funds in 1943. In addition to that he had these other funds.

Q. The question was whether or not you put that to income because you could not trace the source.

A. He adds, your Honor: Just for no other reason?

The Court: Just——

The Witness: I think if you will read the question: For no other reason.

The Court: I think he said simply.

The Witness: Simply for no other reason. This was the reason I was giving here as a fact, I was able to account for all of his funds from known sources. In addition to that——

The Court: You are unable to account for that?

The Witness: Yes, he had this other money that went into these bonds.

Q. (By Mr. Robnett): When you say you were able to account for all of his money from known sources——

A. Yes, sir. [559]

Q. You knew, did you not, and were told by the defendant that he had currency, and had had for years; that he did have every year?

A. I found no evidence of it.

Mr. Robnett: I move to strike the answer as not responsive.

(Testimony of J. Bryant Eustice.)

The Court: It may be stricken.

Mr. Robnett: Please read the question. I would like a yes or no answer.

Mr. Strong: I submit——

The Court: It is a compound question.

Mr. Robnett: I will change the question.

Q. You had been told by the defendant that he had currency and money, aside from that deposited in banks, and had had cash throughout the years?

A. That's what he told me.

The Court: I think it is a good time to take a recess. Remember the admonition.

(Short recess.) [560]

The Court: Usual stipulation?

Mr. Strong: So stipulated.

Mr. Katz: So stipulated.

Mr. Kosdon: So stipulated.

The Court: Proceed.

Q. (By Mr. Robnett): Although the defendant had told you that he always had currency or cash, in your entire calculations you never at any time gave any consideration to that statement or counted that any of the funds which you charged as unaccounted income could have come from that cash or currency he had on hand, did you?

A. No, sir.

Q. Now we will take the next bond, please. The last one that I have was June 5, 1943, \$1,000.

A. On June 25, 1943, another bond was purchased, cost of \$750, which I considered from unexplained funds.

(Testimony of J. Bryant Eustice.)

Q. All of it? A. All of it.

Q. And you charged up in your calculations with that sum of \$750 as taxable income?

A. As taxable income.

Q. All right. Proceed.

A. On June 26, 1943, another \$1,000 bond, cost \$1,000, issued by the Federal Reserve Bank of San Francisco, which was [561] also considered purchased with explained funds.

Q. And charged as unaccounted taxable income?

A. Taken into account as income.

Q. And that bond was likewise in the name of Dora Goldberg as well as Sam Ormont?

A. That is correct.

Q. All right.

A. On July 21 he purchased eight \$1,000 bonds, and the cost was \$8,000.

Q. How much?

A. \$8,000. \$5,992.51 of the purchase price came from the defendant's savings account No. 224-808 at the Security-First National Bank. That was the balance in the account and closed the account. And that amount was not taken into income. The additional amount of \$207.49 was paid in cash and that was taken into account as income, unexplained funds.

Q. That made what price for those eight bonds?

A. That was the price, \$8,000.

The Court: How much was the check?

The Witness: \$5,992.51.

(Testimony of J. Bryant Eustice.)

Q. (By Mr. Robnett): And the other item of cash? A. \$2,007.49.

Q. I understood you to say \$207.

The Court: So did I. [562]

Q. (By Mr. Robnett:) All right. What is the next item?

A. On September 2nd he purchased bonds, the total amount of \$14,000. \$12,500 was drawn from his savings account at the Bank of America No. 747. This much of the purchase price was not taken into account as income. The balance of \$1500 was considered as income from unexplained funds.

Q. The next one.

A. On September 15, 1943, he purchased three bonds which cost \$225, which was considered as having come from, the cost as having come from, unexplained funds.

Q. The amount was \$225? A. \$225.

Q. All right. What is the next one?

A. On September 29, 1943, he purchased another bond for \$1,000 which was considered as purchased from unexplained funds.

Q. Each time you say that they were considered as unexplained funds, you mean that you charged them up against the defendant Sam Ormont as taxable income in your calculations?

A. That is correct.

Q. Is that all of them?

A. No. On December 14, 1943, he purchased five bonds for a total cost of \$5,000. This was money drawn from his commercial account at the Security-

(Testimony of J. Bryant Eustice.)

First National Bank at Huntington [563] Park.

This item was not taken into income.

Q. Pardon me. I don't seem to get these dates consecutively. Hadn't you already testified as to the \$225, that that was December 15?

A. September 15.

Q. And then the next date of a \$1,000 bond was the 29th of some month?

A. Of September also.

Q. September? A. Yes.

Q. And this last one was dated what?

A. December. [564]

Q. Proceed.

A. That was all the bonds that I have a record of, purchased in 1943.

Q. Now, you have figured out the aggregate, have you not, of the items that you have heretofore testified to, which you call unexplained funds in the purchase of these bonds, and have that item somewhere, haven't you?

A. Yes, sir. U. S. Government bonds that were purchased during 1943, \$51,475.

The Court: I think he means the item that you referred to as being fourteen thousand dollars, or something like that; the difference between the amount of money which you could trace, which went into the purchase of bonds, and the amount of money that you could not trace?

The Witness: That is correct. That item was \$14,084.76.

The Court: \$14,084.76?

The Witness: That is correct.

(Testimony of J. Bryant Eustice.)

Q. (By Mr. Robnett): The total of the amount that you traced the funds of, as you say, from the purchase of the bonds for 1943, was \$37,390.24?

A. That is correct.

Q. All right. Wasn't that \$14,084.76, which you claim should have been accounted for in 1943, and added to what Mr. Ormont actually accounted for, that makes up the total amount [565] you claim should have been accounted for?

A. That is part of the adjustment of \$18,109.30. That's one item of it.

Q. Eighteen thousand how much?

A. —109.30.

Q. You have \$4,024.54 in addition to that in other items, have you? A. It must have been.

Q. Other items were involved?

A. Other items, yes.

Q. Let us take up those items. Will you give them to me, as to what they were, according to your report?

A. Cash from undisclosed sources, deposited to the taxpayer's personal bank account as cash, in addition to cash used for the purchase of bonds.

Q. How much? A. \$1675.

Q. Was that all in one deposit?

A. No, sir.

Q. It was made up of various items?

A. Made up of various items.

Q. Will you give me the items and the dates, please?

(Testimony of J. Bryant Eustice.)

A. Deposited, February 19, 1943, \$275 cash. Would you like the total deposit on that date, included in the item?

Q. Have you the deposit slip there before you?

A. No, I have not.

Q. Have you seen it here? A. It's here.

Q. That's on what bank?

A. Security First National Bank, commercial account, Huntington Park.

Q. Have you found the deposit slip?

A. This is it.

Q. Part of Exhibit 14. And you are showing me deposit slip dated 2-19-43, is that correct?

A. 2-19-43.

Q. All right. You say cash. You have testified that there was cash that you had charged to him that was deposited on that day, of \$275, haven't you? A. That is correct.

Q. And there is another item of deposit on that date of \$500, isn't there? A. Yes, a check.

Q. I ask you if, as a matter of fact, the first item that you told me was currency or cash—if it wasn't a check, and that the clearing house number on the check was 90.903?

A. It appears to be, yes, sir.

Q. And it was not cash, was it? It was a check?

A. Apparently so, from the deposit slip. [567]

Q. All right. Did you try to trace that check out?

A. Apparently not because it was taken into account as cash. I took it into account as cash.

(Testimony of J. Bryant Eustice.)

Q. You never tried to trace the check?

A. No.

Q. Because you had it down as cash, is that correct?

A. That is correct; yes.

Q. Who made that report that you have before you that says cash or currency?

A. I made the report.

Q. You made that yourself, didn't you?

A. Yes, sir. I made that at the bank.

Q. What did you have before you when you did it?

A. The deposit slips.

Q. And the identical one I have just shown you and that I have called your attention to that was a check, that is the one you examined, isn't it?

A. This deposit slip that you showed me here; yes, sir.

The Court: How do you account for the error?

The Witness: Well, it might be accounted, your Honor, in this respect, that I might have made the error myself in taking it off, in having it called by the bank clerk getting these items out of the box and going through them, he may have called it to me as cash and I didn't catch it as not having been cash. [568]

The Court: Didn't you examine the deposit slip yourself or did you leave that to a bank clerk to call them off?

The Witness: He usually handed them to me and I would look at them. Sometimes he would call the amounts of what it was.

The Court: That would reduce that figure by that amount?

(Testimony of J. Bryant Eustice.)

The Witness: That would reduce it by \$275, that is, if it is a check from the Acme Meat Company, which it may have been a check from the Acme Meat Company.

Q. (By Mr. Robnett): Now let's find out what the items are that are embraced in the \$1400 that is remaining.

A. Then on June 5, 1943, there was a deposit of \$442.82.

Q. That is in the same bank? A. Yes, sir.

Q. That would be in Exhibit 14 also, would it not? Will you show me that deposit slip?

A. (Examining exhibit)

Q. By the way, how do you have that, is any of that cash? A. \$300.

Q. \$300 of it was cash as you have it?

A. Yes.

Q. The date you gave is June 5, 1943.

A. The deposit slip isn't here. [569]

Q. It isn't there? A. Not in this group.

The Court: Do we have any others, Mr. Clerk?

Mr. Robnett: What branch was it of the Security-First National Bank, do you remember? Was it the Huntington Park Branch?

The Witness: The Huntington Park branch; yes.

The Court: Give him all the bank slips and let him look them over.

(The exhibits referred to were passed to the witness.)

Q. (By Mr. Robnett): I am giving you Exhibit 14, 23 and 24—23 seems to be on the Citizens Bank

(Testimony of J. Bryant Eustice.)

—14 and 24 are both on the Security-First National Bank, Huntington Park Branch. Will you look at those and see if either of those contain the deposit slip.

A. (Examining exhibits.)

The Court: Did you find it?

The Witness: No, your Honor. It is not in any of these.

The Court: The testimony of the officer of the Security-First National Bank was that that was all of the deposit slips.

Mr. Strong: That is what I thought he said.

The Witness: I believe he brought the bank statements. That will indicate whether there was a deposit for that amount [570] on that date.

The Court: He was requested to bring all bank slips and deposit slips. Could you have been in error about the bank?

The Witness: No. This is all in the same transcript, the analysis that I have here, on the same page after the other. The bank statement will indicate whether or not there was a deposit for that amount actually made on that date.

Mr. Robnett: No there was not. There was a deposit of \$444.82 made on that date, which is \$2 different from the figure you gave.

Mr. Strong: May the witness see the bank statements which are in evidence?

Mr. Robnett: Yes. This is Exhibit 15.

(The document referred to was passed to the witness.) [571]

(Testimony of J. Bryant Eustice.)

A. The bank statement says \$444.82.

Q. You have it in your notes as \$442, haven't you? A. \$442.82.

A. But there is no deposit slip here for that deposit, is there; I mean, in any of these exhibits?

A. No.

The Court: Did you see any deposit slip at the bank?

The Witness: Yes, your Honor, I saw the deposit slip, and that there was an item of cash and a check deposited on that slip. The \$142.82. \$300 was cash, and was a withdrawal from the Acme Meat Company.

Q. (By Mr. Robnett): That's according to your records? A. According to my records.

Q. Is that the only record, or complete record of that deposit that you have—\$300 cash, you say?

A. Yes, \$300 cash.

Q. And \$142.82? A. \$142.82, yes.

Q. Acme Meat Company's check?

A. Acme Meat Company's check.

Q. You have no memorandum of the other \$2, as to what that was, as shown on the bank ledger?

A. Just a minute, please. If there was another \$2—no, I haven't any record on it. [572]

Q. The bank ledger is right there before you?

A. I would like to see the deposit slip.

Q. I would very much like to see it.

A. Before I answer that.

Q. It isn't here, apparently. Look at the bank record there. I believe it is 15. I think you have

(Testimony of J. Bryant Eustice.)

it there, haven't you, the ledger sheets of that? What does that show as to the amount of the deposit on June 5? A. \$444.82.

Q. Yes. Without the deposit slip I can't complete the examination on that matter. I don't know whether we can get one. If there is one, we would like to get it.

The Court: What do you want, a subpoena?

Mr. Robnett: I think we can do it by telephone over the week end, your Honor, and have it here Monday. I just want you to know I was not completing this.

Q. What is the next item? That would be \$300 you are claiming, of the \$1,400 there, isn't it?

A. That is correct.

Q. That leaves \$1,100 then to account for. Will you kindly tell me what that is made up of?

A. That's a deposit on September 4th, of \$800.

Q. What month? I understand you to say December. A. September.

Q. September 4? [573] A. 1943.

Q. I understand we are talking entirely about 1943 now? A. Yes.

Q. What do your records show as to that?

A. \$800 in currency.

Q. \$800? A. In currency.

Q. Is that the total deposit?

A. That is the total deposit.

Q. That entire amount you are charging, of that \$1100 balance as unexplained?

A. Yes, the \$300 and the \$800.

(Testimony of J. Bryant Eustice.)

Q. That September 4. Have you the deposit slips before you?

A. The same condition exists here, apparently. There is no deposit slip here for September 4, '43, though the item of \$800 shows on the bank statement.

Q. It does show? A. Yes.

Q. It shows a deposit of \$800; it does not show currency, of course? A. Of course not.

Q. We would like to finish that up if we can get the deposit slip. Would you proceed to the next item? That would leave \$300 more, would it not, under your claim? [574]

A. There is a deposit on March 20, 1943.

Q. March? A. March 20.

Q. You are going backward?

A. It's a different account.

Q. It's a different bank? A. Yes, sir.

Q. March 20? What bank is this?

A. This is the defendant's savings account No. 747 at the Bank of America, Brooklyn and Soto. A deposit for a total amount of \$400.

Q. There was \$400 deposited?

A. Yes, sir.

Q. How does your record show that as broken up?

A. Three checks from the Acme Meat Company of \$100 each, and \$100 currency. [575]

Q. There are three checks of 100 each, making \$300 of the \$400 and the balance of the 100 was what? A. Currency.

(Testimony of J. Bryant Eustice.)

Q. It is the \$100 currency that I take it you are claiming was income? A. That is correct.

Q. Is there a deposit slip there with that bank?

A. Could I have the deposit slips for the Bank of America?

The Court: Give him all the deposit slips.

(The documents referred to were passed to the witness.)

The Witness: I have the deposit slip.

Mr. Robnett: All right. May I see it?

Q. That is in Exhibit 37, isn't it?

A. That is correct.

Q. Under date of March 20, 1943, and it shows a deposit, the first item that is show is a deposit of coin, isn't it, \$100?

A. Well, cash or coin. It most likely belongs up on the other line.

Q. Isn't it on that line?

A. Where it says coin, yes.

Q. And it is \$100, and then there are three checks of \$100 each all bearing the number 90-903?

A. Yes, sir. [576]

Q. That is the clearing house number?

A. Yes, that is correct.

Q. And making a total of \$400? A. Yes.

Q. Now that, as I figure it, leaves to be accounted for the sum of \$200 of the amount that you claim was unreported as income?

A. That is correct. There is another deposit on the same bank on April 3rd.

Q. April 3rd of 1943? A. 1943.

(Testimony of J. Bryant Eustice.)

Q. What was the total deposit, according to your records? A. \$502.54.

Q. How was that broken up?

A. There is \$200 cash, two \$100 checks drawn on 90-903 and another check for \$102.54 drawn on 16-322.

Q. I hand you Exhibit 37 again. Will you find the deposit slip in that, please?

A. (Producing document.)

Q. That is the last slip on the exhibit, isn't it?

A. That is correct.

Q. And that is dated 4-3-1943?

A. That is correct.

Q. The first item shows currency \$200? [577]

A. Yes.

Q. Then there is a check bearing a clearing house number 90-903, \$100; the next check, the same clearing house number, \$100; and the last one bearing the clearing house number 16-322, \$102.54, making the total \$502.54? A. That is correct.

Q. That is the additional \$200 that you have claimed should have been reported as income in 1943?

A. That is as additional cash. I have also taken this other check of \$102.54 into income as unidentified checks, unexplained checks.

Q. Oh, you took the \$200 cash, the total of that, and then you took the \$102.54?

A. That is a separate item on my analysis here.

Q. How much was that \$102 check?

A. \$102.54.

(Testimony of J. Bryant Eustice.)

Q. Did you trace that check?

A. Yes, I did.

Q. What did you find? Whose check was it, if you could tell?

A. It was a check issued by E. A. Kaplan.

Q. And what was that bank, do you know, 16-322?

A. The Bank of America, Wabash and Evergreen.

Q. Did you see the maker of that check?

A. Mr. Kaplan, yes; I saw Mr. Kaplan. [578]

Q. You saw him? A. Yes.

Q. Where does he live?

A. 3941 Rogers Street, Los Angeles. He is a meat dealer. That is, he had a market at 1121 City Terrace. That was his check No. 765 which he charged to purchases.

Mr. Robnett: Thank you very much.

Now, your Honor please, this is the day before a holiday and I wondered if we might adjourn a few minutes earlier and let's see if we couldn't get the rest of that bank record by Monday afternoon.

The Court: I thought it being the day before a holiday we might work a little longer.

Mr. Robnett: I did want to complete this matter while it is all together, if it is agreeable. Of course, if the court wants to go on, I will have to start in with a new subject.

The Court: I am agreeable.

I think perhaps we might as well recess until Tuesday morning and give the lawyers Monday afternoon to catch up with their other business. Recess until Tuesday morning at 10:00 o'clock.

Remember the admonition.

(Whereupon, at 4:25 o'clock p.m., a recess was taken until 10:00 o'clock a.m., Tuesday, June 3, 1947.) [579]

Los Angeles, California, Tuesday, June 3, 1947,
10:00 A.M.

The Court: United States vs. Ormont and Himmelfarb.

Mr. Strong: Ready.

Mr. Robnett: Ready.

The Court: The usual stipulation?

Mr. Strong: The usual stipulation.

Mr. Katz: So stipulated.

Mr. Robnett: Yes.

J. BRYANT EUSTICE

the witness on the stand at the time of adjournment, having been previously duly sworn, resumed the stand and testified as follows:

Cross-Examination

(Continued)

By Mr. Robnett:

Q. Mr. Eustice, when we took our last adjournment you had just testified about a check for \$102.54, made out to Mr. Ormont by Mr. Kaplan. Do you remember that?

(Testimony of J. Bryant Eustice.)

A. Yes. May I have Exhibit 40, and my work papers?

Q. Do you have any memorandum on Exhibit 40 or your notes of that transaction?

A. I have the information which I——

Q. Just a moment. Do you have a memorandum concerning it? A. Yes, I have here. [583]

Q. May I see it, please? This document, is this an exhibit in the case? A. Yes.

Q. Or is this one of your other notes?

A. It's the summary of what I have here.

Q. Do you have it in Exhibit 40—this transaction?

A. I may have some memoranda on it here. I have no index of all these papers. It may take time to find it. How much was the amount of that, again?

Q. \$102.54.

A. I have a notation here as to the number of the check, the amount, who it was issued by, where it was deposited.

Q. I will ask you, Mr. Eustice, if you did not talk to Mr. Kaplan, or trace that check out as to what it was issued for? Answer that question yes or no, please. A. Yes, I did.

Q. I will ask you if Mr. Kaplan didn't tell you that that was to reimburse Mr. Ormont for some merchandise Mr. Ormont had bought and paid for for Mr. Kaplan in that amount?

A. Not at that time, prior to my making this report.

(Testimony of J. Bryant Eustice.)

Q. Did he afterward tell you that?

A. He was subpoenaed as a Government witness, and came back in here during the trial. At that time, at Mr. Strong's request, I talked with him, and he was asked to [584] bring in his books and records so that we could have another look at this item, or trace that item, to find it on his books and records, and he did not bring the books and records indicating what disposition had been made of that check, as he stated.

Q. I am asking you if he stated what I have asked you? Did he state, in substance, at any time to you, that the \$102.54 check to Sam Ormont was to reimburse Mr. Ormont for merchandist Mr. Ormont had bought and paid for Mr. Kaplan?

A. Yes. I was trying to think what you said. That was what he stated, when he was in here.

Q. As you testified the other day, you had it charged against Mr. Ormont as income, is that correct? A. That is correct, yes.

Q. But, if, as Mr. Kaplan has now told you, that it was merely to reimburse Mr. Ormont for merchandise, then it would not be income, would it?

A. No, it would be a reduction then of the amount that I had charged, or considered as money used for personal expenses of Mr. Ormont.

Q. Wouldn't it be a reduction of what you have claimed was the amount of unreported income of Mr. Ormont?

The Court: You can answer that yes or no, Mr. Eustice.

A. The answer would be no.

(Testimony of J. Bryant Eustice.)

Q. (By Mr. Robnett): Mr. Eustice, let me understand you. You remember [585] testifying the other day that you had charged it as income because it was unexplained? A. Yes, sir.

Q. Now according to your testimony this morning, from your explanation you received from Mr. Kaplan, it was merely a reimbursement of Mr. Ormont and therefore it would not have been income, would it? A. I was about to explain——

The Court: You can answer that. Wouldn't it reduce the amount that you claim he underpaid?

The Witness: Not necessarily, your Honor. If it is reflected as a reduction of the amount available for personal living expenses, then it becomes a question of——

The Court: Why do you say personal living expenses when it was given to the defendant here to repay him for something that he bought for this other man, if that is the case?

The Witness: Well, it would not be taken into income as unexplained deposits, but it becomes a reduction of the amount he had available for personal living expenses. Then the question becomes, is the amount that is shown for his personal living expenses correct or not. If they are correct then it indicates that the taxpayer must have used some of these unexplained funds for his personal living expenses. That item that is in the balance sheet as personal living expenses is not an item that can be substantiated although I have evidence that it was at least that amount that he paid for personal living expenses.

(Testimony of J. Bryant Eustice.)

The Court: I do not see the relationship between this [587] item and his personal living expenses. I cannot understand that. Did you take the \$102.54 into consideration as an increased amount of his income in your calculations?

The Witness: Yes, your Honor, I did.

The Court: Then if it was not the item or the purposes or uses which you thought, it would decrease the increased amount, wouldn't it, and if you increase it some other way that is something else?

The Witness: That is correct, your Honor.

The Court: Then this item standing alone, that would decrease it by that much?

The Witness: As income from unexplained checks; yes, your Honor.

The Court: The total income that you charge to him.

The Witness: Before I could say that it reduced the total income, I also included that income when he paid the money out as being a personal expense, although I also was in error there. It was not a personal expense and therefore it would reduce it.

The Court: It would reduce it by twice that amount, would it?

The Witness: No, by exactly that amount.

The Court: But it would reduce it by that amount?

The Witness: Yes, the amount that he had to use or was available for personal living expenses.

(Testimony of J. Bryant Eustice.)

If the amount that [588] I have shown as having been used and available for personal living expenses is correct, then it indicates that the taxpayer used some of the unexplained funds for that purpose.

The Court: I cannot possibly see what that has to do with it. In other words, you are trying to say that if this is reduced by that, then you can figure out a way to charge him with an equivalent amount some other way.

The Witness: I just don't figure it that way, your Honor.

The Court: That is your answer, every time you say yes, you reduce it, but his living expenses. Let us stick to one item. If counsel is correct in his statement and you are correct in your answer, in the assumptions, then you would reduce this total amount here, whatever it is—what sum is it?

Mr. Robnett: \$102.54.

The Court: No, the total, \$31,000 or something.

Mr. Robnett: \$18,000, I believe.

The Court: Whatever that sum is, it would reduce that total amount by that sum, and assuming all your other calculations are correct?

Mr. Strong: Your Honor, may I submit there are different sums here and unless he has a specific sum that is being referred to——

The Court: I do not know which one of these papers you are taking about now. Is this 1942 or 1943?

Mr. Strong: 1943, your Honor. [589]

Mr. Robnett: 1943.

(Testimony of J. Bryant Eustice.)

The Court: Summary of adjustments to income?

Mr. Strong: That is right.

The Court: The corrected amount you have there is \$30,512.86, is that correct?

The Witness: \$30,512.86; yes, your Honor.

The Court: Now in arriving at that figure, you added \$102.54 as part of the correct amount, didn't you?

The Witness: Yes, your Honor.

The Court: Now assume that all of your other calculations here were correct when you made this and that one was wrong, then it would be reduced by \$102.54?

The Witness: Yes, if we just leave out the calculations——

The Court: I say, assume all your other calculations are correct.

The Witness: I don't know whether, your Honor, I have made it clear or not, but every item that is taken into consideration on the income is also reflected some place on my net worth statement.

The Court: I am not talking about the net worth statement now; I am talking about your corrected income. In other words, if he had \$102.00 less income he would have \$102.00 less income.

The Witness: The question then arises, from a matter [590] of accounting, what item did it reflect or change on the computation of the taxpayer's net worth.

The Court: Go on, counsel. Proceed with your examination.

(Testimony of J. Bryant Eustice.)

Q. (By Mr. Robnett): Now, Mr. Eustice, referring to your comparative statement of net worth for 1943, you have, have you not, under assets an item called "balance due from broker"?

A. Yes, sir.

Q. About the seventh or eighth item, I believe.

A. Yes, the second to the last.

Q. You have that item, don't you?

A. Yes, sir.

Q. And under January 1, '43 you have that item as \$4.20, is that right? A. Yes, sir.

Q. And at December 31, '43 you have \$2447.28?

A. Yes, sir.

Q. Now is it not a fact that you took the \$2447.28 into account as an income for that year?

A. No, sir, I did not.

Q. What did you do with it?

A. I didn't do anything with it except to include it in his assets at the end of the year 1943.

Q. You increased his assets to that extent, didn't you? [591]

A. Yes, on the net worth computation I showed that his assets were increased by \$2447—not increased by that, but that he had assets of \$2447.28 as a balance due from broker.

I also reduced the corporation's stocks by \$2037.60 because he sold those stocks and instead of having the asset as corporation stocks he had it as a balance due from broker.

(Testimony of J. Bryant Eustice.)

Q. But the differential between the \$2037.60 and \$2447.28 would reflect in your report as an income, wouldn't it?

A. Yes, he had a profit on the sale of those stocks.

Q. Now that broker transaction that you refer to here is the same transaction that you have heretofore referred to, is it not, and to the same exhibits—I will show you Exhibits 26 and 27 and 28, which are the statements from Merrill Lynch, E. A. Pierce and Cassell, and Merrill Lynch, Pierce, Fenner & Beane?

A. Yes, sir. [592]

Q. Are those things brokers and broker transactions that are referred to in the item I have been asking you about?

A. Yes, sir, they are.

Q. And those merely showed that they owed Mr. Ormont on December 31, 1943, \$2447.38?

A. That's what they showed that they owed Mr. Ormont.

Q. They owed him that?

A. That is correct.

The Court: It shows no stocks?

The Witness: The stocks were sold, your Honor.

Q. (By Mr. Robnett): The difference between that figure and the \$2037.60, which is shown just above it, the second item above it, that differential of close to \$410 you show as an unreportable taxable income, do you?

A. Not all of that figure, no, because he sold the stocks at a profit of \$371.73. That is only reportable

(Testimony of J. Bryant Eustice.)

as 50 per cent, because he had held the assets over six months, and it was taken into income at 50 per cent or at \$185.87.

Q. \$185.87?

A. That is the adjustment, as shown on line 6 of adjustments for 1943.

Q. Do you claim that, the \$185.87, growing out of that transaction as unreported income for that year?

A. Yes, for 1943. [593]

Q. Yet, isn't it a fact that according to your own records, or these exhibits I have shown you—isn't it a fact that Mr. Ormont never was paid that \$185.87, or any of the \$2447.28 until 1945 by the concerns whose names are on those exhibits.

A. That is correct, he did not avail himself of his privilege of drawing that money out until 1945.

Q. In other words, he did not receive the cash on that until 1945?

A. That is correct.

The Court: Were you calculating this on a cash basis?

The Witness: On a cash basis, you Honor, yes, sir, on the opinion that the money was available to him.

The Court: If someone owes you some money on December 31st, and you don't collect it for eight months, although by law you are entitled to it, you have to report it on a cash basis, is that your theory?

The Witness: My theory is, if it is income, and you haven't collected it until the following year, and there is some restriction on it, it is income.

The Court: How do you know what he did?

(Testimony of J. Bryant Eustice.)

The Witness: In some cases, Like Merrill Lynch, Pierce, Fenner & Beane, you know you can go there and collect it any day, if that amount is due you at that time. Mr. Ormont did not avail himself of that privilege until 1945. [594]

The Court: You say that is your opinion? If some man went down here, you would have a good claim against him, because he broke one of the stenographer's legs last week when he tried to get out in a hurry?

Mr. Strong: That isn't the case, your Honor. It shows it was available.

The Court: If you are going to practice law on the basis that all the money you think is due you you are going to collect——

Mr. Strong: This is a different story.

The Court: If it was on a cash basis, it seems to me it was a cash basis. However, there may be some explanation.

Mr. Robnett; I move to strike out the witness' voluntary statement that he could collect it any day if he desired.

The Court: That is a conclusion of the witness, and the jury will disregard it.

Mr. Strong: It is an explanation of why he took it into account.

The Court: The statement of the witness is stricken from the record as a conclusion.

Q. (By Mr. Robnett): In connection with your testimony concerning the purchase of \$10,000 worth

(Testimony of J. Bryant Eustice.)

of G bonds on May 5, 1943—ten \$1000 bonds—have you your notes on that?

A. Yes, sir. [595]

Q. You testified that you traced out in that transaction \$8147.73, and therefore that amount was not considered by you as unreported income, is that correct?

A. That is correct.

Q. You also testified that there was cash in the transaction of \$1852.27, and that item you did consider and figure as unreported income and taxable income?

A. That is correct.

Q. Will you show me, please, whether or not you have anything to indicate that that was cash, that \$1852.27.

A. I don't know as we have anything here in our possession. I went to the bank and requested them to look this item up for me, and they produced their records, and showed me that that——

Q. Just a minute. You saw some bank records?

A. Yes, sir.

Q. You concluded from that, did you, that that was cash.

A. Yes, the records indicated that that was cash. That is what they told me.

Q. Is there a deposit slip showing any cash on or about that date, in that amount, \$1852.27?

A. Showing that deposit?

Q. Yes.

A. No, not that I know of. As nearly as I remember [596] the transaction, they showed me the bond slips used for the purchase of the bonds, and indicated where the funds came from for that.

(Testimony of J. Bryant Eustice.)

Q. Did you make a memorandum of that purchase slip?

A. I made the memorandum that I have here on my work papers.

Q. Let me see it, please.

A. That that eighty-one——

Q. Just a minute. All you have there is, unexplained funds, cash, isn't it?

A. That is correct, yes.

Q. You have no memorandum of the purchase slip for the bonds?

A. No, I have no copy of that.

Q. You didn't take off any copy of it at all?

A. No.

Q. Did you examine it?

A. As I recall, yes. That is, the clerk showed me it there. I remember the transaction. That I had requested them to look that item up for me, and probably a week or two later I went back down there, and they said they had the information for me.

Q. That was May 5, 1943, wasn't it?

A. May 5, 1943.

Q. Did you have, or do you have there in Exhibit 40 any [597] record showing tracings by you of a check dated 4/26/1943? That would be April 26, 1943, for \$1332.27, by the Acme Meat Company to Sam Ormont?

A. No, I have no record of it in my papers.

Q. You have no record of ever having seen such check, or examined it, or traced it out, to find what it was for, do you?

(Testimony of J. Bryant Eustice.)

A. No. I see it isn't charged to his capital account or his personal account.

Q. Then, as to that item, you did not charge it to Mr. Ormont as an income, did you?

A. This amount of 13——

Q. \$1332.27?

A. No, the item you referred to I did not show what it is, but I didn't take it into account as income, no, sir. [598]

The Court: But you did figure the \$1800 was unexplained income?

The Witness: Yes, your Honor.

Mr. Robnett: I would like to have this check marked as the next exhibit.

The Clerk: R.

(The check referred was marked Defendants' Exhibit R for identification.)

Mr. Robnett: And this check as the next one.

The Clerk: S.

(The check referred to was marked Defendants' Exhibit S for identification.)

Q. (By Mr. Robnett): I am going to show you Exhibit R, which is a check on the Security—pardon me, counsel.

(Exhibiting document to counsel.)

Q. (By Mr. Robnett): ——which is a check dated 5/1/1943, being check No. 3, on the Security-First National Bank and made payable to the Se-

(Testimony of J. Bryant Eustice.)

curity-First National Bank for \$8147.73. Did you ever see that check before?

A. Yes, sir, I believe I have.

Q. Isn't that the check you examined and entered as the check payment on those \$10,000 worth of bonds?

A. Yes, it is.

Mr. Robnett: I offer that in evidence. [599]

Mr. Strong: No objection.

The Court: Admitted

(The document referred to was received in evidence and marked Defendants' Exhibit R.)

Q. (By Mr. Robnett:) Now I will show you Exhibit S, which is a check of the Acme Meat Company to Sam Ormont, dated 4/26, 1943, being check No. 1, and is for the sum of \$1332.27, and ask you to examine that.

A. (Examining check)

Q. Did you ever see that check before?

A. I expect I have seen the check; yes, sir.

Q. You say you have no record of ever having made any tracing of where it came from or what it was for?

A. I have a record of his capital and drawing account and it is not, as my records indicate, charged to his capital or drawing account of the Acme Meat Company.

Q. According to your records, have you got it charged at all?

A. No, I haven't a transcript of the other parts of his records. It would be quite voluminous.

(Testimony of J. Bryant Eustice.)

Mr. Robnett: I offer that in evidence.

Mr. Strong: No objection.

The Court: Admitted. [600]

(The document referred to was received in evidence and marked Defendants' Exhibit S.)

Mr. Robnett: Now, Mr. Clerk, if you will kindly mark these. I have nine checks there that I would like to have marked as our next exhibit.

The Clerk: T.

(The checks referred to were marked Defendants' Exhibit T for identification.)

Q. (By Mr. Robnett): I will again show you Exhibit S and ask you to state whether or not you found that that check had been used in the purchase of those \$10,000 worth of bonds as a part of the \$1800 and some dollars that you testified to.

A. I didn't find that it; no, sir.

Q. You never traced the check out at all, did you?

A. As to what it was used for, no, I couldn't tell you where it was charged on the books and records, that particular check. I can say that it was not charged to his drawing account.

Q. I will now show you Exhibit T, which I believe contains nine checks, all personal checks of Sam Ormont drawn on the Security-First National Bank of Los Angeles, Huntington Park branch, to various payees and in various amounts, and ask you to examine those.

A. (Examining documents.) [601]

(Testimony of J. Bryant Eustice.)

Q. Did you ever see those checks before?

A. I believe I have. They are personal checks drawn on his personal bank account.

Q. Will you kindly—I will give you a piece of paper and a pencil—I will give you this blank piece of paper and I am going to ask you to take the amounts of the various checks and add them up.

A. (Making calculation) I get a figure of \$1332.27.

Q. Now I will ask you to compare that figure that you have just given us with Exhibit S, which is the check from the Acme Meat Company to Sam Ormont, dated 4/26/1943.

A. It is the same amount.

Q. Exactly the same amount, isn't it?

A. Yes.

Mr. Robnett: I offer in evidence the figures that the witness just made.

Mr. Strong: No objection.

The Clerk: U.

The Court: Admitted.

(The check referred to was Defendants' in evidence and marked Defendants' Exhibit U.)

Q. By Mr. Robnett: Now, in checking to find out the condition of Mr. Ormont's accounts, his various accounts and his income, didn't you check the bank books of the Acme Meat Company and their [602] checks that they had issued to him particularly?

A. Yes, I checked the checks that were drawn as I went over them.

(Testimony of J. Bryant Eustice.)

Q. And didn't you also examine Mr. Ormont's person bank account and his checks?

A. Yes, I listed the checks on the personal bank account.

Q. Now I will ask you if, when you made the examination of those records, the check books and checks, if you didn't then find and determine that the check, which is Exhibit S in this case, being for \$1332.27, by the Acme Meat Company to Sam Ormont, was in repayment to Sam Ormont for the checks, Exhibit T, which you have totaled and amount to exactly the same amount, and are made to various persons and were repaying Mr. Ormont for those expenditures that he had made to those payees in behalf of the Acme Meat Company.

A. No, I didn't determine that. I would have had to know what I was looking for there in the absence of books and records. If he or anybody that was familiar had told me that was what had taken place, I would have known what to look for.

Q. Now I ask you if, when you were checking on that \$10,000 bond purchase of May 5, 1943, if you didn't also find that not only the check for \$8147.73, which is in evidence as Exhibit R, not only that check was used in that purchase but likewise there was used in that purchase a money order for \$20. Did you find that out?

A. No, I did not.

Q. And there was likewise used in that purchase, interest paid by the Government of the United States on some of the bonds Mr. Ormont had to the

(Testimony of J. Bryant Eustice.)

amount of \$50, and that \$50 was used on account of the purchase of these bonds.

A. I did not find that; no.

Q. Did you ever try to find anything of that sort?

Mr. Strong: I object, your Honor. There is no evidence that those are the facts at all.

The Court: Objection overruled.

Mr. Robnett: Will you read the question.

(The question referred to was read by the reporter as set forth above.)

The Witness: I have explained that to be that I believe I went to the bank and got what information they had available.

Mr. Robnett: I move to strike out the answer as not responsive and ask that the witness be instructed to answer the question yes or no.

Mr. Strong: I think the witness should be instructed to tell the truth, your Honor.

The Court: I had assumed that he was telling it all the time. I didn't know that he needed that instruction.

Mr. Strong: But if the answer yes or no isn't the entire story, I think he can explain. [604]

The Court: That is a different situation.

Mr. Strong: But to force him to answer yes or no may not tell the whole story.

The Court: He can answer the question yes or no.

The Witness: Will you read it again?

(Testimony of J. Bryant Eustice.)

(The question referred to was read by the reporter as follows:

(“Q. Did you ever try to find anything of the sort?”)

The Witness: The answer is yes.

Q. (By Mr. Robnett): Did you in that effort investigate as to whether or not the Government of the United States had paid Mr. Ormont \$50 in interest on bonds? That can be answered yes or no.

The Court: That is the question he just answered. He said he tried to find out.

Mr. Robnett: I will ask him another question.

Q. What did you do in trying to find out about any interest that had been paid Mr. Ormont on bonds.

Mr. Strong: I object, your Honor. There is no evidence of any interest paid Mr. Ormont that was used to purchase anything.

The Court: Objection overruled.

The Witness: Well, in going over the analysis of his deposits I located what he did with some of the money that he [605] received as interest on Government bonds, and I deducted that from the total amount that he had received and reported on his income tax return and considered, not having found what he did with the balance of it, and the taxpayer not having books and records, I considered that he had that much available for personal living expenses and included that in the amount that I showed that he had available for personal living expenses.

(Testimony of J. Bryant Eustice.)

Q. (By Mr. Robnett): Did you in that examination find that he had received \$50 in interest some time near the first of May 1943 on Government bonds?

A. Oh, no, I had no way of finding that.

Q. You had no way of finding that?

A. No, sir.

Q. Do you not, in your capacity, have available to you for examination the records of the Government of the United States as to payment of interest on bonds?

Mr. Strong: That is argumentative, your Honor.

The Court: Objection overruled.

The Witness: My understanding is that we can write to Chicago, where the disbursing office is, and get that information as to what has been paid but they can't tell you what the disposition was that the taxpayer makes of that money.

Q. (By Mr. Robnett): I understand that. I am not asking you that, I am [606] asking you if you had a means of finding out if he got any such money.

The Court: Did you make such an inquiry of Chicago?

The Witness: No, your Honor.

The Court: These bonds are the bonds that you pay the face value and then the Government pays interest rather than E bonds that you buy and wait for the interest?

The Witness: That is correct, your Honor.

(Testimony of J. Bryant Eustice.)

Q. (By Mr. Robnett): Now, Mr. Eustice, are you in a position to say that Exhibit S, which is the Acme Meat Company check for \$1332.27, was not used by Mr. Ormont in the purchase of those \$10,000 worth of bonds?

A. No, I am not in a position to say that it was not.

Q. Now I ask you if that check was so used, would it not reduce to that extent and in that amount the item you charged against him, against Mr. Ormont, as unexplained income of \$1852.27.

A. It would reduce the amount that I show as unexplained income to purchase United States Government bonds by that amount. [607]

Q. Thank you. And if Mr. Ormont used a money order of \$20, and a United States Government payment of \$50 as interest on bonds, on the purchase of these \$10,000 worth of bonds, would it not likewise, to the extent of those two items, \$70, reduce the \$1852.27?

Mr. Strong: That is objected to upon the ground that there is no evidence that any such sums were used on the purchase of these bonds.

The Court: Objection overruled.

The Witness: Can I have the question?

(Question read by the reporter.)

Q. (By Mr. Robnett): Which latter sum you charge as unreported income?

A. Yes, it would to the extent of the \$50 item. I know where that is from. I don't know where the \$20 came from.

(Testimony of J. Bryant Eustice.)

The Court: It depends on the source of the \$20.

A. Yes, your Honor. This would also reduce the amount of money he had available for person living expenses.

Mr. Robnett: I move to strike out the voluntary statement of the witness as not responsive to the question, if the Court please.

The Court: I don't know what difference it makes.

Mr. Robnett: I don't either.

The Court: I have been studying your statements since that time. If you take it off from one side you have go to [608] put it on the other, and you took it off of the increase.

Q. (By Mr. Robnett): You testified as to the purchase by Mr. Ormont, on January 18, 1943, of \$7000 worth of bonds, and said that he paid \$5000 on that purchase price by check No. 336, I believe from the Acme Meat Company, and that the source of the other \$2000 was unexplained, and, therefore, you charged it as unreported income?

A. That is correct.

Q. That is correct? A. Yes.

The Court: May I have the question?

(Question read by the reporter.)

The Court: Those again were par value bonds, face value bonds?

The Witness: Yes, your Honor, that is correct.

Q. (By Mr. Robnett): Have you, in your work sheet, Exhibit 40, a record of the examination of the check for \$5000, which you say was used?

(Testimony of J. Bryant Eustice.)

A. I haven't a record of the check, what was on the check, no.

Q. May I see what you have, please?

The Court: If I understand your testimony about the \$1300 check, you don't have any record of that at all, the one we were talking about a few minutes ago? You don't have [609] any record of the disposition of that all?

A. No, your Honr.

The Court: It wasn't charged to his capital account, or credited to it, or credited to his drawings in any way?

A. No; as it has been indicated here, the taxpayer made certain purchases of these various items, amounting to \$1332.27, which was charged to his personal account. There were no invoices presented regarding these items, and I concluded——

The Court: It was unexplained income?

The Witness: No, I concluded that the amount charged to his personal account was living expenses of the taxpayer, and that this other item did not show up in his withdrawals from the business, but, apparently, it was a check in reimbursement of a purchase that he had made.

The Court: If that did not show up on his books, then it was a check of his in reimbursement of another purchase he had made?

The Witness: I don't remember that particular check.

The Court: That is, if it had shown in his books you would have given him credit for it?

(Testimony of J. Bryant Eustice.)

The Witness: If I had tied the two in together, yes, your Honor, but I never tied all these items in together.

The Court: What I am getting at is, whether or not you remember that item specifically, to see whether or not there [610] was a possibility of an error in his bookkeeping?

A. I did not make a specific examination of that item. This is the item, check No. 336.

Q. (By Mr. Robnett): On what bank?

A. Bank of America, Brooklyn and Soto. I think the check indicated that it was cashed at that bank, and I considered that it would have been used for the purchase of that bond.

Q. And you made this record of this bank account, did you?

A. This is his capital account.

Q. His capital account? You mean you made this page did you?

A. No, sir.

Q. You took this off?

A. It was copied by Mr. Phoebus from the books.

Q. As he has it, it was check No. 339?

A. 336.

Q. Whose check was that?

A. The Acme Meat Company's check.

Q. Dated what day?

A. It was charged to the capital account January 8, 1943. That might not be the date of the check.

Q. You say that was on the Bank of America?

A. No. His check indicated that it was cashed at the Bank of America, Brooklyn and Soto Streets.

(Testimony of J. Bryant Eustice.)

Q. But you don't have a record of what bank it was drawn on?

A. Oh, yes, it was drawn on the Acme Meat Company's account.

Q. In what bank?

A. Their account at that time would have been at the Security First National Bank, Huntington Park.

Mr. Robnett: I will ask that this check be marked as our next exhibit.

The Clerk. V.

(The document referred to was marked as Defendant Sam Ormont's Exhibit V for identification.)

The Court: What is U?

The Clerk: That is a blank sheet of paper.

The Court: Blank?

The Clerk: Well, it has some figures on it.

Q. (By Mr. Robnett): Did you examine the \$5000 check?

A. I believe I did, yes, sir.

Q. I show you Exhibit V, and ask you to look at that check.

A. Yes, sir.

Q. Did you ever see that before? [612]

A. I believe I have.

Q. Is that the check that you have in your statement that was used on the purchase of these bonds?

A. Yes, I believe that is the check.

Q. Do you see any No. 336 on that check anywhere?

(Testimony of J. Bryant Eustice.)

A. Looking at this now, this capital account, as copied by Mr. Phoebus, it is possible that he indicated that that was the check register page number, 336.

The Court: The answer may be stricken.

Mr. Robnett: I move to strike the answer as not responsive.

The Court: Mr. Strong will make all the arguments to the jury. Just answer the question. He asked you a simple question: Do you see the check No. 336?

The Witness: It is check No. 4413.

The Court: That is not the question. Do you see check 336 on the check? Can you answer that?

The Witness: The answer is no.

The Court: We will take a short recess. [613]

The Court: Usual stipulation?

Mr. Strong: So stipulated.

Mr. Robnett: So stipulated.

Mr. Katz: Yes, your Honor.

Mr. Robnett: I now offer in evidence Exhibit V, just identified by the witness, a check for \$5000.

Mr. Strong: No objection.

The Court: Admitted.

(The document referred to was received in evidence and marked Defendants' Exhibit V.)

Q. (By Mr. Robnett): Mr. Eustice, referring to the \$5000 check, Exhibit V, that you have just examined, did you in your calculations consider and charge that as income of Sam Ormont for the year 1943?

A. No, sir, I did not.

(Testimony of J. Bryant Eustice.)

Q. I mean by that, not unexplained income but did you charge it up as a part of his reported income?

A. No, as no part of his income.

Q. What did you charge it to, if at all?

A. I considered that it was money available to buy this particular bond.

Q. Now these bonds were purchased on about the 18th day of January 1943, you say?

A. I understand that was the date on the bond, the [614] date issued.

Q. That is the date on the bonds?

A. Yes.

Q. All right. You don't know what date they were purchased, do you? A. No, sir.

Mr. Robnett: I ask to have this marked as the next exhibit, please.

The Clerk: W.

(The document referred to was marked Defendant's Exhibit W for identification.)

Q. (By Mr. Robnett): I will show you Exhibit W and ask you if you have ever seen that or the original of it.

A. No, sir, I have not.

Q. That is, as you note, an application for United States savings bonds, defense series G, in the amount of \$7000, isn't it?

A. That is correct.

Q. And it is dated 1/9/1943, isn't it?

A. That is correct.

(Testimony of J. Bryant Eustice.)

Q. I ask you if you have on your records any purchase of bonds in the sum of \$7000 by the defendant Sam Ormont on that date, January 9, 1943.

A. No, sir. [615]

Q. The only \$7000 purchase of bonds that you have are, the only item of that, is the item you mentioned a moment ago where the bonds were dated in February, is that correct?

A. January, I believe.

Q. January? A. Yes.

Q. Pardon me. January 18th? A. Yes.

Q. Would you not say that this is the same bonds that you have referred to in your testimony?

A. It would appear to be the same bond. They were issued apparently by the Federal Reserve Bank at San Francisco. They may be dated later than the application.

Q. And the bonds that you have the record of were bonds that were made to Samuel Ormont and Mrs. Dora Goldberg, were they?

A. That is the information I have on it; yes, sir.

Q. And you note that on Exhibit W, that that is the way the bonds were to be?

A. The same name; yes.

Q. The same names. All right.

I now offer that in evidence.

The Court: W is admitted.

(The document referred to was received in evidence and marked Defendants' Exhibit W.)

(Testimony of J. Bryant Eustice.)

Q. (By Mr. Robnett): Now, Mr. Eustice, aside from the \$5000 check that you say was used in the purchase of those bonds, did you make any attempt to find or determine the sources of other funds up to the amount of \$2000 that were used in the purchase of those bonds? A. Yes, sir; I did.

Q. In that attempt, did you examine the checks of Sam Ormont on his personal account?

A. Yes, sir.

Q. And did you also examine any other checks, checks of the Acme Meat Company, to Sam Ormont?

A. Yes, sir.

Q. Did you examine any other checks from anyone else in that connection?

A. I wouldn't have access to checks of anyone else.

Q. Do you have in your record an item of a check dated 1/9/1943 by Sam Ormont on the Security-First National Bank of Los Angeles, Huntington Park branch, for \$595.25?

A. What was the date again, please?

Q. The date is 1/9/1943.

A. I have a check that was shown charged to his bank account of \$595.25 charged January 13, 1943.

Q. Yes. And what did you credit that to, or charge to in your analysis?

A. I considered that it was cash available to the taxpayer for personal living expenses.

Q. You did not, in your examination of that check, consider it was cash available by the defendant on account of the purchase of these bonds?

A. No, sir.

(Testimony of J. Bryant Eustice.)

Q. In your examinations of the \$2000 item, you charged them all to unexplained and unaccounted for taxable income against Mr. Ormont, didn't you?

A. That is correct, explained by the taxpayer.

Q. And in doing that, you did that, did you say before, because you could not find any sources from which that \$2000 might have come, or any part of it?

A. That was one of the reasons, yes, sir.

Q. And you say this \$595, you simply charged that to his living expenses?

A. Yes, I considered that was cash available for his living expenses.

Q. But you did charge it, did you not, in your calculations, to him as income for that year?

A. The \$595.

Q. Yes. A. No, sir. [618]

Q. You did not? A. No, sir.

Q. You did not charge any items that you placed in living expenses as income of Mr. Ormont for that time?

A. Maybe I did not understand your question.

(Question read by the reporter.)

A. No, sir, I determined what he had available, and what was indicated, and considered that all as personal living expenses, and, of course then made the observation as to whether that was a reasonable amount or not.

Q. I understood from you this morning——

The Court: But you disallowed a lot of so-called personal expenses, didn't you?

(Testimony of J. Bryant Eustice.)

The Witness: No, your Honor.

The Court: You did not disallow any?

The Witness: No.

Q. (By Mr. Robnett): Did I understand you correctly this morning with regard to Exhibit S, this Acme Meat Company's check for \$1332.27, that you said that you charged that, or you would charge that to personal living expenses?

A. What I said was that these other checks drawn on his personal bank account, which totaled \$1332.27, as they were drawn to his personal bank account, and there was no books or records on his personal bank account as to what [619] those items represented, I considered that they were checks drawn for his personal living expenses.

Q. You examined the checks, didn't you?

A. Yes, I had possession of all those checks.

Q. I want to show them to you, Exhibit T. That first check, who was that drawn to?

A. It looks like Hachten & Robinson Livestock Company.

Q. For \$494.90? A. Yes, sir.

Q. You charged that then to Mr. Ormont's living expenses, did you?

A. Yes, personal living expenses. It might be living expenses, it might be other expenses that he might have that were not deductible on his income tax return.

Q. What other expenses would it be?

A. Well, if he issued a check at any time for the payment——

(Testimony of J. Bryant Eustice.)

Q. I mean this one here?

A. Yes, if it was not deductible, and it was indicated by the fact that he drew a check on his personal bank account, it was indicate that it was not deductible as a business expense, so I considered it as a personal expense. In other words, it might still be a customer, or somebody he purchased from, and still be an item the taxpayer could not substantiate, so, instead of drawing the check on his business [620] account, he could have drawn it on his personal account.

Q. So you charged this as non-deductible expense?

A. Yes, personal expense.

Q. That is the way you have it?

A. I considered it as personal expense.

Q. Let us take up the next item on this same Exhibit T. That is a check, is it not, to the California Livestock Com. Co. for \$26.40?

A. Yes, and the things I have said about that other check equally apply.

Q. The same way, you charged it as a living expense, and non-deductible?

A. I considered it a living expense, yes.

Q. Then we come to another check to the same people as at first, a check to Hachten & Robinson Livestock Com. Co. for \$157.70. Is that the same, and your explanation would be the same as to how you charged that to living expenses and non-deductible?

A. That is correct. I considered it a living expense.

(Testimony of J. Bryant Eustice.)

Q. The next one is Holmes Livestock Com. Co. for \$55.20. The same explanation as to that, and as to the manner in which you would charge it?

A. That is correct.

Q. The next one would be to P-r-o-d, it looks like, Livestock Mktg. Assn., for \$70.10? [621]

A. That is correct.

Q. The same explanation as to that?

A. Yes, the same thing. [622]

Q. And the next one—it looks like D. H. Lilly-white, does it not? A. Yes.

Q. For \$249.30? A. Yes.

Q. The same as to that? A. Same thing.

Q. The next one, to Gallagher Livestock Com. Co., \$35.40? A. That's correct.

Q. Same explanation as to that check?

A. Yes.

Q. And the next check, Hachten & Robinson Com. Co., \$64.35? A. That is correct.

Q. And the next one, Producers Livestock Mktg. Assn., \$82.82; some explanation as to that?

A. Same thing.

Q. Same application of them?

A. That is correct.

Q. And the next one, Southwest Commission Co., \$89.10.

A. That is correct; same answer.

Q. In other words, if I understand you correctly, you charged everything that Mr. Ormont drew against his personal account that you didn't other-

(Testimony of J. Bryant Eustice.)

wise find what you though was an [623] explanation, you charged it as living expense and not deductible?

A. Considered that it was personal expenses. Not always necessary as living expenses, but personal items that would not be deductible on his business. In other words, the fact that it was drawn on his personal account indicate that.

Q. What is the total amount that you have so charged against him in 1943?

A. Considered as personal living expenses?

Q. Yes.

The Court: On checks like this, you mean?

Mr. Robnett: Yes, checks like this, and all other amounts that he charged to his living expenses.

The Court: By the way, did you go to see these livestock marketing associations, or whatever they are, to see whether he bought meat from them of livestock?

The Witness: No, your Honor.

The total amount for 1943 was \$3082.66.

Q. (By Mr. Robnett): \$3082.66?

A. That is correct.

The Court: That is the amount you charged against him as what?

The Witness: Considered that he had that amount available for personal living expenses.

The Court: That is, out of the business?

The Witness: Money that he drew from his business and money that he drew by checks that showed that he drew out of his bank account and

(Testimony of J. Bryant Eustice.)

includes these checks that Mr. Robnett has shown, included \$1332.27. If it so happens, and which apparently is correct, that the \$133.27 does not belong in there, well then——

The Court: It is a refund to him of money that he spent for the business?

The Witness: That is correct.

The Court: Buying livestock?

The Witness: That is correct. Then he had that much left available for living expenses, or the difference between \$3082.66 and \$133.27.

The Court: Which would reduce the total income that you disallowed?

The Witness: If he actually spent \$3082, or anywhere near that amount—that is not an exact figure, your Honor; that is an estimate—if it can be said that he spent approximately \$3000, and this amount is taken out of it, then he must have spent cash that was not available, that is, the money had to come from some place for his personal living expenses or his personal expenses.

The Court: You mean you found \$3000, or whatever it is, and now you find \$1300 which appears to be, at the present [625] state of the record, a refund to him, you are proceeding on the basis that he spent \$3000 anyhow on living expenses?

The Witness: Yes, as a reasonable amount of living expenses.

The Court: That he spent that much for living expenses?

(Testimony of J. Bryant Eustice.)

The Witness: I have other evidence to indicate that too, your Honor, that he spent that much money for personal living expenses.

The Court: In other words, if he didn't spend those checks that he gave to these market associations for living expenses, but spent them in his business, he spent some other sum equivalent to that amount?

The Witness: If it still can be said that he spent \$3000 or approximately that amount.

The Court: For living expenses?

The Witness: For living expenses. The cash had to come from some place.

The Court: I understand.

Q. (By Mr. Robnett): Now, do you have a record of a check from the United Dressed Beef Company, dated December 11, 1942, for \$204.75 to Sam Ormont?

A. What is the date, please?

Q. December 11, 1942.

A. No, I don't find such check. [626]

Q. Perhaps it would aid you if you will revert to the Sam Borne matter. Do you remember that?

A. Yes, sir.

Q. Do you have that check, or any such check?

A. I show that he received an interest check from Sam and Ben Borne in 1943 of \$105, which was not reported.

Q. That was 1943?

A. In 1943.

(Testimony of J. Bryant Eustice.)

Q I am talking about 1942.

A. In 1942 he received altogether \$1,299.75, of which he deposited \$990 and apparently cashed checks for the amount of \$309.75.

Q. Was there one check for that amount, that you just gave?

A. I could not say whether it was one check.

Q. What did you do with regard to the money received from, as you have it there, Sam Borne—that was the same as United Dressed Beef Company, or do you know?

A. Yes, they are owners, I understand, of that, or the major stockholders.

Q. All right. Now what disposition did you make with regard to that with regard to reflection on income?

A. I didn't take any additional income into account. The \$1299.75 had been reported by the taxpayer as interest income, the \$990 I showed as having gone to his bank account, [627] having been deposited in his bank account, and the \$309.75 as being cash available for personal expenses.

Q. You did not figure any of those items as available for purchase of those bonds, the \$7,000 worth of bonds?

A. No, sir.

Q. Did you at any time see checks of the Borne transaction, any of the checks which they gave?

A. Yes, I saw some of them.

Q. You examined them, didn't you?

A. Yes.

(Testimony of J. Bryant Eustice.)

Mr. Robnett: Will you mark this?

The Clerk: X for identification.

(The document referred to was marked Defendant's Exhibit X for identification.)

Q. (By Mr. Robnett): I am going to show you Exhibit X, which is the check I have just described to you, dated December 11, 1942, for \$204.75, from United Dressed Beef Company. Did you ever see that check before?

A. I couldn't say whether I saw this particular check before or not. I was down to the office of the United Dressed Beef and examined the checks. I asked them to look up as many of these checks that they could find, they did not find all of them, but I got all the information that I could get from them at the time. [628]

Q. Did you get any information concerning a check of this kind?

A. Not that I recall. If I had, I couldn't tell by looking at the check what disposition was made of it.

Q. I understand you can't.

I offer it in evidence at this time, if your Honor please.

Mr. Strong: I object on the ground there is no foundation laid.

The Court: It will be marked for identification.

Mr. Robnett: All right.

Q. Now in determining whether or not there were any funds available which Mr. Ormont could

(Testimony of J. Bryant Eustice.)

have used in the purchase of those \$7,000 bonds, aside from the \$5,000 check, did you examine any checks of the Acme Meat Company?

A. I examined the checks but I didn't determine that any of those checks had been used to pay any part of the \$2,000.

Mr. Robnett: I would like to have this group of checks, there seems to be eight checks, marked as the next exhibit.

The Clerk: Y.

(The documents referred to were marked Defendant's Exhibit Y for identification.)

Q. (By Mr. Robnett): I now show you Exhibit Y, consisting of eight checks of the Acme Meat Company to Sam Ormont, and ask you to examine [629] those checks. A. Yes, sir.

Q. Have you ever seen those checks before?

A. I would say I have; yes, sir.

Q. And you checked them, did you not, when you were making your analysis of his bank account and of his income? A. That is correct.

Q. And you have a notation concerning these identical checks, do you, in your notes, in your Exhibit 40?

A. No, not regarding those particular checks.

Q. You don't have anything about them at all?

A. I have a summary here showing the total amount that the taxpayer withdrew from the Acme Meat Company.

(Testimony of J. Bryant Eustice.)

Q. In what year?

A. I am looking at '42. Those are '43, are they not?

Q. Seven of them I believe are '42 and one is '43.

By the way, are you looking at Exhibit 40 or any exhibit that has been offered here or has been identified?

A. This is a part of my work papers here which is a cumulation and summaries of the figures that are on these work papers and are much more accessible.

The Court: I thought all your work papers were offered for identification.

Mr. Robnett: That is what I understood.

The Court: These are additional work papers that are not [630] included?

The Witness: This is what I am working towards in making up the work papers, and I use information from my work papers to accumulate and put on these sheets in more presentable form.

The Court: That is a part of your work papers?

The Witness: Yes.

The Court: That isn't part of your report?

The Witness: Yes, it is a part of my report also.

The Court: But it still a part of your work papers? Is it or isn't it?

The Witness: Yes.

The Court: If he needs it to refresh his memory I think it ought to be marked for identification.

(Testimony of J. Bryant Eustice.)

Mr. Strong: I thought it was part of the work papers that were marked. I have no objection to having it marked. May we have it marked as part of the other exhibit?

The Court: It will be marked Exhibit 40-A.

(The documents referred to were marked Government's Exhibit No. 40-A for identification.)

The Court: We will recess until 2:00 o'clock.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m.)

Los Angeles, California, Tuesday, June 3, 1947
2:00 p.m.

Mr. Robnett: There is a matter I thought should be called to your Honor's attention, that happened this morning while court was in session. A duces tecum subpoena was handed to Mr. Sam Ormont, one of the defendants in this case, to produce records, and I want to call the court's attention to it before the question of production is determined. It is an order to produce this afternoon, at 2:00 o'clock, at this time. He could not, of course, do it within that length of time at all.

The Court: In this case?

Mr. Robnett: In this case, yes. Certain of his books and records or the Acme Meat Company's books and records, of which he is the owner, and

at this time we make the suggestion to the court that I do not believe it is proper to require the defendant to furnish any evidence for the prosecution in the case. Under the Constitution I think the defendant is protected against having to furnish any evidence, or, if he is required to furnish it, he should be granted immunity from any further prosecution, either in this case, or any other case the books would pertain to. That is what I wanted to call to your Honor's attention, to see whether or not it is going to be the order of the court that he produce them.

The Court: I have authorized no subpoena duces tecum in [635] this case. Nothing has been brought to my attention in connection with the matter. Was the subpoena secured by the prosecution?

Mr. Strong: It was secured, not directly from your Honor, but through the Clerk of the Court. I want to say, your Honor, I did not know it was served in court. I certainly would not have had it served in court at any time. That was an act on the part of the Marshal.

The Court: It is highly improper, certainly, for the Marshal to come in here and hand the defendant any document in the presence of the jury.

Mr. Strong: I don't think the jury knew what it was. The Marshal was not told to bring it into court. That was to be served outside.

The Court: What is your motion in connection with the matter?

Mr. Robnett: The motion is to quash service, if the court please, and to assign it as misconduct

on behalf of the plaintiff, to serve a paper while the proceedings were going on, before the jury in this court; or that the defendant be instructed by your Honor that he does not have to obey the subpoena.

The Court: The evidence in the case up to now is that Sam Ormont was the owner. I don't know what years.—Any and all records during the years 1944 and 1945 relating to [636] loans or payment of other funds to Phillip Himmelfarb, or to Acme Meat Company, Inc. There has been some suggestion that there was an Acme Meat Company, Inc. If that is the case, then the defendant here, if he is the person who has custody, and is in charge of those books and records for the Acme Meat Company, Inc., would be bound to produce them. But certainly not to produce any of his own books and records in connection with this prosecution.

Mr. Robnett: The corporation. Your Honor, I don't think this is directed to their books and records at all. I don't think it is.

The Court: It says to Sam Ormont and/or Acme Meat Company and Acme Meat Company, Inc.

Mr. Robnett: I did not know that.

The Court: But I have no knowledge, except the intimation here during the trial sometime that the Acme Meat Company was a corporation.

Mr. Kosdon: If the Court please, I think I can explain it. The Acme Meat Company was incorporated, I believe, on May 29, 1946, and commenced doing business sometime in June, 1946, and it has no bearing whatsoever on this.

The Court: This is made returnable on the 3rd day of June, at 2:00 o'clock p.m. I am surprised that it is a subpoena for the records of the defendant individually; and, in any event, I will consider this an oral motion to quash the [637] subpoena.

Mr. Robnett: Yes, your Honor.

The Court: And will continue the matter on the hearing of the motion to quash the subpoena until, say, tomorrow at 2:00 o'clock, at which time you can support it by the appropriate written documents and affidavits.

Mr. Strong: In this connection I would like to call your Honor's attention to page 371 of the record, where your Honor has pointed out, in refusing to admit secondary evidence, that the books themselves must be produced, and that there are processes of the United States Government to use, and you have the processes of this court. That is page 371 of the record.

The Court: That is correct. But you can't use the process here to have a man testify against himself. I meant to say, whatever process is available is available. If they are not available, they are not available and, certainly, you can't compel the defendant here to produce his personal books and records in this criminal proceeding.

Mr. Strong: We are laying the foundation for secondary evidence.

The Court: You can't use that as a foundation, because a defendant has a right to his books and records.

Mr. Strong: That is what your Honor said, what I read from page 371.

The Court: In any event, the hearing on the motion to [638] quash the subpoena is continued until tomorrow at 2:00 o'clock p.m.

Mr. Robnett: Thank you. That is all I had, your Honor.

The Court: Call the jury down.

(Jury return to court room at 2:10 o'clock p.m.)

J. BRYANT EUSTICE,

the witness on the stand at the time of recess, having been previously duly sworn, resumed the stand and testified as follows:

Cross-Examination
(Continued)

The Court: Usual stipulation?

Mr. Robnett: Yes, your Honor.

Mr. Katz: So stipulated.

Mr. Strong: So stipulated.

Mr. Robnett: I first want to offer in evidence Exhibit Y for identification, the last exhibit that was identified by the witness.

Mr. Strong: May I look at that, your Honor? I don't remember what it was.

The Court: It was eight checks. The witness testified that he has examined those, I believe.

Mr. Strong: He said that he examined them, but that is about all.

The Court: They are admitted in evidence.

(The document referred to was received in evidence and marked Defendants' Exhibit Y.)

(Testimony of J. Bryant Eustice.)

Q. (By Mr. Robnett): Mr. Eustice, this morning you testified that you had allocated certain funds to Mr. Ormont's living account for 1943—if I have the figure correctly, if not you correct me—of \$3082.66. A. Yes, sir.

Q. Is that correct? A. That is correct.

Q. Will you give me the breakdown of that, that is, [640] just where you got those items and what they were?

The Court: Now you say, when you allocated that. You mean you have allocated that in rebuilding what you term here a comparative net worth statement?

The Witness: Yes, your Honor.

The Court: But you didn't allocate that in your adjustments to income, did you?

The Witness: No, sir.

The Court: All right.

Q. (By Mr. Robnett): Pardon me. Right on that, did you not charge that up as income to Mr. Ormont?

A. No, it was not charged up as income.

Q. Anything that he drew and it went into the living account was never considered by you as a part of his income for that year?

A. That is correct, in just accounting for funds.

Q. All right. Will you give me the information, please?

The Court: I don't understand that. You mean regardless of the amount of money that he drew

(Testimony of J. Bryant Eustice.)

out of the business and spent on himself you didn't call that income?

The Witness: No, I didn't call it income, your Honor.

The Court: You mean you didn't call it net income?

The Witness: Any part of the income, as long as he had—there was an indication that he had money enough of his [641] own from known sources to pay for these living expenses.

The Court: You mean you didn't call it additional income?

The Witness: I did not call it additional income.

The Court: But you did call it income?

The Witness: No, not income. This is just a matter of accounting for funds.

The Court: But you didn't call it additional income?

The Witness: No, your Honor.

The Court: But you did take that into account in calculating his gross income, did you not?

The Witness: I did in this respect, we use the figure—the figure I had here of \$3082.66—that is made up of checks that he drew on his personal bank account and added to that money that he had left over that I couldn't account for that I assumed that he used for personal living expenses.

The Court: I am not talking about that now, I am talking about the whole amount of money that he drew out and spent on himself, whether it was for rent or clothing or whatever it might be, didn't

(Testimony of J. Bryant Eustice.)

you take that into consideration in calculating his gross income at all?

The Witness: No, your Honor. What I was doing there, if the item was not a reasonable amount, well I would have had to make considerations, and so forth, in two ways—if I, as an example, can use an exaggerated figure on this and [642] state that the taxpayer had \$6000 available for living expenses—I could have said that he probably didn't spend that much money and he could have used a certain amount of that for the purchase of these bonds or any other expenses that I took into income.

If it had shown up that it was less than that figure, say only \$1000, and I estimated that he must have spent around \$3000, well then my attitude would have been that he must have used some of these unexplained funds in paying for his personal living expenses.

The Court: I still apparently am quite obtuse about this, I don't understand it. The gross amount of money that Sam Ormont received in each one of these years was his gross income, wasn't it, whether he spent it buying livestock, race horses, rent or presents for anybody. The gross amount of money that he received, no matter what he spent it for, was his income, wasn't it?

The Witness: Yes, I think the answer would be yes.

The Court: The gross amount of money that he received was his income?

(Testimony of J. Bryant Eustice.)

The Witness: That is right.

The Court: All right. Well, then, you did take into consideration in making your calculations the amount of money that he received and spent on his living expenses, didn't you, in making your calculations of his gross income? [643]

The Witness: Yes, I determined only in my proof of income, that is, on my net worth statement, your Honor.

The Court: Well, on your net worth statement you are trying to prove that your calculations are correct?

The Witness: Yes, sir.

The Court: But I am not talking about your net worth statement or about whether your calculations are correct or not correct; I understood you to say you didn't take it into consideration, but I cannot see how you can figure a man's income unless you do take it into consideration.

The Witness: Well, I have had to take it into consideration but I did not at that time add any additional income.

The Court: In his net worth statement?

The Witness: In his net worth or otherwise on account of money that he may have used for personal expenses because I thought that there was this amount, which was a reasonable amount.

The Court: Well, then, what you mean to say is that you did not charge him an additional income?

The Witness: Yes.

(Testimony of J. Bryant Eustice.)

The Court: The money that he spent in living expenses?

The Witness: Yes, your Honor.

The Court: But that you did take into consideration the money spent in living expenses in calculating his gross income? [644]

The Witness: Yes, your Honor.

The Court: All right.

Q. (By Mr. Robnett): Will you give me the breakdown of that then, please, that is, for 1943?

A. Yes.

Personal expenditures paid by cash, \$2566.95.

Q. That is cash?

A. Paid by checks drawn on his personal bank account.

Other personal expenditures——

Q. Pardon me just a moment. Was that last statement in connection with the \$2500, was that by check?

A. Yes, paid by check drawn on his personal business account.

Q. All right.

The Court: You said at first cash. You mean checks?

The Witness: Checks.

The Court: But not checks drawn to cash?

The Witness: No, sir.

The Court: All right.

The Witness: And other personal expenditures, which I considered paid by cash, \$515.71.

(Testimony of J. Bryant Eustice.)

Q. (By Mr. Robnett): That is cash, not checks?

A. That is cash that I determined he had available. [645] I don't know how he spent it as far as the detail on it goes, but he had that available.

Q. Where did you get that, that you knew that was available for living?

A. Well, the taxpayer drew from the Acme Meat Company \$12,296.03 as indicated by his drawing account. He deposited of that amount \$12,042.82 to his bank accounts, leaving a balance of \$2053.21 that I assumed was checks cashed, cash that he had.

He received checks for interest on Government bonds of \$387.50 and deposited of that amount \$125, leaving an amount available of \$260.50, but undeposited.

I believe by adding those two items together you will get the amount that I have used as expenditures paid by cash of \$515.71.

Those items added together, checks and cash, should give the amount of \$3082.66, which was the total cash available plus checks that he drew for living expenses, for personal expenses.

Q. (By Mr. Robnett): Now will you give me the detail that makes up that \$2566.95, and give me the bank, the check, the amount of the check and the number.

The Court: The total, Mr. Witness, for 1943 was \$6525.58? [646]

The Witness: Yes. I was about to explain that he had——

(Testimony of J. Bryant Eustice.)

The Court: That you disallowed?

The Witness: That he had some other items that I could definitely determine of payment on life insurance of \$704.95 and payments on 1942 Federal income tax of \$2477.91.

The Court: \$2447, isn't it?

The Witness: \$2477.91.

The Court: I am in error then because it says \$2447.

The Witness: Then he had taxes of \$260.06.

The Court: What are you reading from? One of these statements?

The Witness: I am reading from this, my work papers.

Mr. Strong: That is a summary of adjustments.

The Court: It has been typed wrong because mine is \$290.06.

All right. Plus the \$2566.95 and the \$515.71 makes \$6525.58 which was not all his living expenses, was it?

The Witness: No.

The Court: These are things that you disallowed? In other words, that is what you said he was not entitled to deduct.

The Witness: Well, it represented all of his personal expenses of life insurance and payments on income tax, and so forth.

The Court: All right. [647]

The Court: All right. Excuse my interruption. Go ahead. I think he asked you for a list of checks on the other. I wanted to follow the testimony. It

(Testimony of J. Bryant Eustice.)

is too easy to get thrown anyhow in a tax case.

The Witness: There are about 60 items of checks that are drawn on this account.

The Court: He said there are about 60 items. Do you want them all?

Mr. Robnett: I need them, because of the process——

The Court: That is all right. It is your lawsuit. You are entitled to have them if you want them.

Mr. Robnett: I need all of the checks charged to living expenses.

The Witness: These checks, as I recall, did not have any number on them. The date, I believe are the dates that they are charged to the bank account.

Q. All right.

A. Starting with January 6th, \$2.50, News Week;

\$595.25, check to Sam Ormont;

\$5.09, Southern California Gas Company. Excuse me a minute. These checks that were taken into account is something else, you don't wish them in, as I understand it.

Q. I want everything that makes up your \$2566.95.

A. O.K. \$7.46, Southern California Gas Company;

\$ 7.57, Department of Water and Power;

4.00, Southern California Gas Company;

113.18, Franchise Tax Commissioner;

249.26, ——apparently that isn't involved;

10.00, American Red Cross;

(Testimony of J. Bryant Eustice.)

10.00, W. H. Teasley;

494.90, Hachten & Robinson Livestock Commission;

157.50, to the same parties;

249.30, D. H. Lillywhite;

77.10, Producers Livestock Marketing Association;

26.40, California Livestock Commission;

55.20, Holmes Livestock Commission;

64.35, Hachten & Robinson Livestock Commission;

82.82, Producers Livestock Marketing Association;

35.40, Gallagher Livestock Commission;

89.10, Southwest Commission Company;

5.59, Department of Water and Power;

7.29, Southern California Telephone Company;

2.94, Southern California Gas Company;

7.49, Southern California Telephone Company;

7.82, Department of Water and Power;

3.95, Southern California Gas Company;

4.80, Bank of America;

4.95, Department of Water and Power;

8.48, Southern California Telephone Company;

3.72, Southern California Gas Company;

.21, bank charge;

6.95, Department of Water and Power;

6.68, Southern California Telephone Company;

2.99, Southern California Telephone Company;

30.00, cash;

6.79, Department of Water and Power;

.51, bank charge;

5.10, Southern California Gas Company;

7.95, Southern California Telephone Company.

That seems to be the end of 1943.

Q. Is that all of it? A. Yes, sir.

Q. I now show you Exhibit Y, which consists of several checks.

A. These are the ones we looked at this morning.

Q. Yes, you looked at these this morning. You said you had examined them before. Are each of these checks charged by you as a part of Sam Or-

(Testimony of J. Bryant Eustice.)

mont's living account, or living expenses for 1943?

A. Well, they would go into it indirectly, I would say, in cash items. They are money available.

Q. In cash items? A. Yes.

Q. There are not any of these checks you have just listed, I notice. [650]

A. That is correct, yes, sir.

Q. Have you, in your statement, or in your work sheets, these checks, and how you handled them in your accounting, these particular ones?

A. No, I do not.

Q. I will ask you now to refer to 1942, and tell me whether or not in 1942 you allocated any funds to Mr. Ormont's living expenses? If so, how much?

A. What would be called his living expenses, would be \$1703.24. There are two other items of personal expense. That is, payment on life insurance of \$1058.15; payment of 1941 Federal income tax, \$1015.17. Adding them to \$1703.24, we have a total of \$3776.56.

Q. I again refer you to Exhibit Y, and call your attention to the first seven checks therein. I believe they are each for \$100. And I will ask you if you charged these checks to Mr. Ormont as income, for 1942?

A. No, I didn't charge those checks.

The Court: When you say income tax——

The Witness: I mean taxable income.

The Court: Or additional income? The witness seems to have a different idea than I do about in-

(Testimony of J. Bryant Eustice.)

come. I don't know whether it refers to taxable income, net taxable income, or gross income.

The Witness: In this case I didn't charge these checks [651] to income in any manner.

The Court: You included them, however, in your calculations as to his total income.

The Witness: Yes, sir, in accounting for his funds.

The Court: In accounting for his gross income?

The Witness: Yes, your Honor.

The Court: So you did consider them as income?

The Witness: Not as income, your Honor. No; just as a matter of accounting for his funds.

The Court: These are checks from the Acme Meat Company to him?

The Witness: Yes, your Honor.

Q. (By Mr. Robnett): They are all dated in 1942, are they not?

A. They are all dated 1942, yes.

Q. What did you do with these, if anything, in your calculations, in arriving at Mr. Ormont's income, that is, taxable income for 1942?

A. Well, as far as the checks were concerned, that is, I took his total drawings from the business, as shown from his business records, and deducted from that the amount that he deposited to his personal bank accounts, and considered that the balance that was undeposited was the amount of \$506.09. I might state here, there might be, considering the fact that the taxpayer carried some of these checks around [652] with him for a period

(Testimony of J. Bryant Eustice.)

of time before he deposited them to his bank—there might be a little difference between one year and another. Just the same, with the bank account. I didn't take into account outstanding checks at the end of each year in determining the bank balances, because it would be difficult to tell. I was assuming that one would more or less offset the other, except in 1944 he did have one large check outstanding, and I took that into account.

Q. That's the only year?

A. Yes. So there might be, I say, just a slight discrepancy in that respect in the beginning and ending of the year. Understand, I had no books and records, nor the cooperation of the taxpayer in determining these matters.

Mr. Robnett: I move to strike out he had no cooperation of the taxpayer as a conclusion of the witness.

The Court: Yes, it is stricken out, and the jury instructed to disregard it.

Q. (By Mr. Robnett): Did you make a check of the Acme Meat Company's books—their check books, and check accounts?

A. Yes, I believe I have testified to that before that I did.

Q. No, I don't believe you have. That's why I wanted to get this straightened out. You did do that? And didn't you find at that time that these seven checks I have just [653] referred to, which are all dated in 1942, had gone out from the Acme Meat Company to Sam Ormont?

(Testimony of J. Bryant Eustice.)

A. Yes, I so stated in my report.

Q. And, therefore, these checks you counted as money he had received from the Acme Meat Company in 1942?

A. Yes, in the year that the checks were drawn and charged in the business.

Q. You treated the checks, did you not, as cash whether he had deposited them, or cashed them, or not?

A. No, sir.

Q. You did not?

A. No, I did not.

Q. You did not treat the checks as cash?

Mr. Strong: He said he didn't.

A. I told you how I made that determination. I will repeat it again, if you wish it.

The Court: I think you can just answer the question. When you are asked a question, and it calls for a yes or no answer, it is unnecessary to go on and repeat statements you previously made.

Mr. Strong: Except this question was asked and answered three times up to now.

The Court: Not that question: You treated it as cash.

Mr. Robnett: Counsel isn't listening.

Mr. Strong: Yes, I was listening. [654]

Q. (By Mr. Robnett): I show you a list of checks on Exhibit Y, 1-8-43, \$100, Acme Meat Company check to Sam Ormont. Did you, in your calculations of his 1943 income, use that check in any fashion to determine his income, or his taxable income?

A. That was used in determining or arriving at

(Testimony of J. Bryant Eustice.)

his taxable income, yes. I took it into account. I did not add it to income.

Q. You did not? A. That is correct.

Q. What did you do with it?

A. I considered it as a withdrawal from his business.

Q. From his capital account, I suppose?

A. Yes, charged to his capital account. [655]

Q. Did you do the same with the other seven checks that I have shown you in this exhibit that were drawn in '42, did you in '42 charge those against his capital account?

A. They were charged against his capital account and that is the way I considered them.

Q. Now when you were determining how he paid for the \$7000 worth of bonds purchased—and I will give you the date in a minute.

The Court: In January.

Mr. Robnett: Yes, in January 1943.

The Court: There was only one batch purchased in January, wasn't there?

Mr. Robnett: There is only one \$7000 batch purchased, I believe.

The Court: All right.

Q. (By Mr. Robnett): Do you know which ones I refer to and which we are talking about?

A. Yes, I know which ones you are referring to.

Q. You testified to one check here this morning of \$5000 that you determined went into those bonds. In determining where the balance of the \$2000 necessary to make up the \$7000 purchase came

(Testimony of J. Bryant Eustice.)

from, did you take into account any of the items in these checks, Exhibit Y?

A. No, sir, I did not. [656]

Q. You did not consider that any of this money was available for the purchase of those bonds?

A. That is correct.

Q. You noted, did you not, that these were all stamped by the bank as of January 12, 1943, or did you? A. I just noticed that now.

Q. You did notice that, didn't you?

A. Yes, that is correct.

Q. And that therefore none of them had been apparently cashed before?

A. That is correct.

Q. Yet you did not consider that any of this \$800 was available to Mr. Ormont to purchase bonds with in January of '43?

A. No, I used it as being available, these amounts as available for personal expenses.

Q. Personal expenses?

A. That is correct.

The Court: When you say "available" you considered that he used them for personal expenses?

The Witness: That is right, your Honor.

The Court: In '42, the seven of them, or whatever they are?

The Witness: In '42 and '43.

The Court: And the other one in '43? [657]

The Witness: That is right, your Honor. It is not just item by item but by using totals.

The Court: I understand, the total amount.

(Testimony of J. Bryant Eustice.)

The Witness: Yes, by using totals.

Q. (By Mr. Robnett): I thought you said a while ago that these checks were not among the checks that you accounted in making up the living expense account.

A. They were not checks drawn on his personal bank account, no, sir. I didn't state that. But they were a part of the cash available to him.

The Court: In other words, if you couldn't trace the money to bonds or to some place else you said, well, that is living expenses?

The Witness: Yes, that is available.

The Court: He spent it for living expenses?

The Witness: Yes.

The Court: That is what you did for that, you didn't trace that or tie them onto any bond purchase or any other place so you just said that is living expense?

The Witness: That is exactly correct.

The Court: So if they were used, however, for the purchase of bonds you would have to revise your figures, wouldn't you?

The Witness: That is exactly right, your Honor.

Q. (By Mr. Robnett): And it would change, would it not, the amount of unreported taxable income that you have set up for 1943?

A. It would as to the purchase of the bonds and it would be a reduction of the amount shown as used for personal expenses. That would be the effect of this knowledge that I have now that I did not have at that time.

(Testimony of J. Bryant Eustice.)

Q. Would it not also reduce——

The Court: And reduce your total sum over here in your comparative net worth by that amount, the return would have to be adjusted and reduce your corrected income on the 1943 tax?

The Witness: That is right, your Honor. We have \$1332——

The Court: I understand. If it is yes, that is yes.

The Witness: It is yes, your Honor.

The Court: All right.

Mr. Robnett: Your Honor, I will ask to have this check marked as the exhibit next in order.

The Clerk: Z.

(The document referred to was marked Defendants' Exhibit Z for identification.)

Q. (By Mr. Robnett): Mr. Eustice, I will show you Exhibit Z, which is a check of Sam Ormont made payable to Sam Ormont dated 1-9-1943, drawn on the Huntington Park Branch of the Security-First [659] National Bank of Los Angeles, endorsed by Sam Ormont and stamped paid with the perforated stamp. I will ask you to examine that. It is for \$595.25. Did you ever see that check before?

A. Yes, sir, I believe that is one of the items I read off to you here.

Q. That is one of the items that you charged as living expense, isn't it?

A. Considered as living expenses, yes, that is correct.

(Testimony of J. Bryant Eustice.)

Q. You at no time connected that up with the purchase of \$7000 worth of bonds, did you?

A. I did not.

Q. You didn't give any credit for him having that check available and the funds therefrom available for the purchase of those \$7000 worth of bonds?

A. No, I considered it as available for personal living expenses.

The Court: When you say "available" there you mean available for and used as?

The Witness: That is correct, your Honor.

Q. (By Mr. Robnett): And in connection with used as, you merely assumed it was used as, did you not?

A. Merely assumed that it was used as.

Mr. Robnett: I offer that in evidence. [660]

Mr. Strong: No objection.

The Court: Admitted.

(The document referred to was received in evidence and marked Defendants' Exhibit Z.)

Q. (By Mr. Robnett): Now, in connection with Mr. Ormont's living expense, didn't you know that during all these years that are involved, that is, '42, '43 and '44, Mr. Ormont lived at his mother's home which she owned?

Mr. Strong: I object to that. That assumes a fact not in evidence.

The Court: Objection overruled. The witness has testified that he assumed he spent certain money for living, and if he thought it was more than he might have spent.

(Testimony of J. Bryant Eustice.)

The Witness: May I have that question?

Mr. Strong: But this, your Honor, assumes that his mother owned the home. There is no evidence as to that whatsoever.

The Court: Objection overruled.

(The question referred to was read by the reporter as follows:

(“Q. Now, in connection with Mr. Ormont’s living expense, didn’t you know that during all these years that are involved, that is, ’42, ’43 and ’44, Mr. Ormont lived at his mother’s home which she owned?”) [661]

The Witness: No; that is no to that question in general.

Q. (By Mr. Robnett): Have you a record in your records there to that effect, that Mr. Ormont’s mother did not own her own home and that he lived with her?

A. I am referring to the statement by Mr. Ormont to myself during the examination.

Q. You were told then, were you not, by Mr. Ormont that during those years he did live with his mother at her home?

A. That is not what he told me; no, sir.

Q. What did he tell you in that regard?

A. That he had supplied most of the funds for the purchase of that home himself and in fact it was his home.

Q. Will you show me your notes on that?

A. I don’t know that I have any notes. Do you

(Testimony of J. Bryant Eustice.)

have any particular ones you want me to refer to?

Q. I will refer to some, not on that, though, to prove what you said.

Mr. Strong: I don't think such argument ought to go on.

The Court: That is correct. The jury is instructed to disregard counsel's remarks.

Mr. Robnett: Do you want to see this, counsel?

Mr. Strong: No, I don't think so. [662]

Q. (By Mr. Robnett): Showing you Exhibit 40, the pages not being numbered but I am showing you one in which you have at the top "interview with Sam Ormont, 11-27-45," and I will ask you if you will read the first line of your notes there down to the period that I indicate on the second line after the word "ago." Will you read those out loud?

A. Do you want me to read the whole thing?

Q. No, read to where I tell you, to the period on the second line.

A. "Sam Ormont stated that his mother owned home and that she had purchased same about 20 years ago."

Q. Is that "20" or "28" years ago?

A. 28.

Q. Did he so state to you or did you make this entry without him stating it?

A. I would say that that being a note that I made at the time or immediately after that conference, that that must have been what he stated or I wouldn't have written it down there.

(Testimony of J. Bryant Eustice.)

Q. Now, then, as a matter of fact he did tell you that his mother owned the home and that she bought it 28 years before that, didn't he?

A. That is that particular part of that paragraph that you had me read; yes. [663]

Q. Wait a minute. I am asking you to state, after refreshing your memory from these notes that I have just had you read, I will ask you if it isn't a fact that Mr. Sam Ormont told you that his mother owned the home and that she purchased it about 28 years ago.

Mr. Strong: Your Honor, I object. The witness indicated——

The Court: Objection overruled. The witness can answer the question without arguing it.

We would make a lot more progress, too, Mr. Eustice, and you wouldn't be on that witness stand so long if you just answer the questions. Whether or not this man is guilty, or these men are guilty, the law has taken that out of your hands to decide and put it in the hands of the jury and the court. And it gives the duty upon the District Attorney to argue the facts. If you will just answer as briefly and frankly as possible without arguing your point——

The Witness: I see, your Honor. Even though it does not explain the whole matter?

The Court: I will determine if it puts you in a false light. If it does then I will give you an opportunity to explain. But there is a difference be-

(Testimony of J. Bryant Eustice.)

tween putting you in a false light and putting your contentions in a false light.

The Witness: Well, I would say the answer is yes as to the choice of the two. [664]

The Court: What do you mean, the choice of the two?

The Witness: Yes or no.

The Court: You mean to say that the answer is yes or do you mean that it is no? Is that what Sam Ormont told you or isn't it? You stated a few moments ago that he told you that he bought the home and that it was really his home. Now which is your answer, Mr. Witness? You know what we are driving at.

The Witness: Yes, he told me.

The Court: Did he tell you both things?

The Witness: Yes, he gave me further explanations of it which I have not been allowed to bring out.

The Court: He told you both things?

The Witness: That part of it, that the home was in the name of his mother, is correct, and that his mother purchased the home, she purchased it in her name.

The Court: 28 years ago?

The Witness: 28 years ago.

The Court: Then he also told you that he bought the home and that it was actually his?

The Witness: That he worked and made payments on the home out of his earnings.

The Court: And that it was actually his?

(Testimony of J. Bryant Eustice.)

The Witness: I believe there is another document——

The Court: No, not what the document is, what did he tell [665] you?

The Witness: Well, it is actually his mother's, it is in his mother's name.

The Court: All right.

Q. (By Mr. Robnett): You made no note whatsoever in your work sheets, did you, of what you say he told you about him making payments on the home? Just answer that yes or no.

The Court: Examine the documents, if you want to.

The Witness (Examining document): No further notes on that.

Q. (By Mr. Robnett): I don't believe I have asked you about this Exhibit X, United Dressed Beef Company check for \$204.75, as to whether or not you gave any consideration as to Sam Ormont having those funds available with which to purchase those \$7000 worth of bonds.

The Court: What date is that check?

Mr. Robnett: That is dated December 11, 1942, and stamped paid, with a perforated stamp, 1-11-43.

The Witness: I did not consider that as money used for the purchase of bonds; no, sir.

Q. (By Mr. Robnett): That was another item, was it, that you merely considered was available to Mr. Ormont as living expenses? [666]

A. Available for living expenses; yes, sir.

Q. Now, if that check and the checks, the eight

(Testimony of J. Bryant Eustice.)

\$100 checks, or \$800, and the \$595.26 check, which are in evidence as Exhibits Q and Y and Z——

The Court: Let me see now. You just asked him about Exhibit Q. That is the check with the picture of a steer on it?

Mr. Robnett: Yes.

The Court: That is only in for identification. The witness just now testified—you saw the check and did not take it into consideration, was that your testimony, that you saw the check.

The Witness: No, your Honor.

The Court: You have never seen the check before?

The Witness: I have seen some of these checks but I did not see all of them.

The Court: Let us find out about that.

The Witness: I knew what the total amount was that was received from interest.

Mr. Robnett: He just testified, your Honor, that he did take it into account as part of the living expenses.

The Court: Of 1942. That is what I understood him to say just now.

Mr. Strong: I will agree to it going into evidence, just to save time. [667]

The Court: You objected this morning. Your objection was good.

Mr. Strong: Yes, but just to save time I will let it in.

The Court: It isn't a matter of convenience, it is a matter of right. He is either entitled to have

(Testimony of J. Bryant Eustice.)

it introduced or not. If you have an objection that you think should be made, you should make it.

Mr. Robnett: I will offer it in evidence.

The Court: It is admitted in evidence.

(The document referred to was received in evidence as Defendants' Exhibit X.) [668]

Q. Now, I will ask you to examine Exhibits X, Y and Z, which you have already seen before, and I will also give you a piece of paper. I wish you would total all of those exhibits.

A. I make \$1600 of it.

Q. \$1600 even, do you not?

A. Yes, sir.

Q. Now, I will ask you if those checks embraced in this exhibit, totaling \$1600, were used by Mr. Ormont in purchasing the \$7000 worth of bonds in question here, then that would reduce, would it not, to that extent, \$1600, the amount that you claim as unaccounted for taxable income?

Mr. Strong: I object to that upon the ground that there is no showing that these checks were used to purchased these bonds at all.

The Court: He put it on a hypothetical basis.

Mr. Robnett: Correct.

The Court: That's the way I understood it.

Mr. Robnett: Yes, your Honor, I said if they were.

Mr. Strong: Same objection.

The Court: Objection overruled.

(Testimony of J. Bryant Eustice.)

Q. (By Mr. Robnett): Will you answer that question yes or no, please?

A. Can I have the question again, please?

The Court: If they were used to buy bonds, would it reduce [669] the additional income? That's the effect of his question.

Mr. Robnett: Exactly; that he has charged as unaccounted for.

A. No, I don't believe so.

Q. It would not reduce it at all, is that correct?

A. That is correct. I don't believe it would reduce the ultimate computation of his income.

Q. Wasn't it your testimony that the reason that you charged \$2000 against Mr. Ormont as income that he had not paid on for 1943 was because, that on the purchase of the \$7000 worth of bonds, you only found a \$5000 check paid to purchase them, and it left \$2000 that you said was unexplained, and, therefore, you charged that \$2000 unexplained as taxable income against him?

A. Yes, it would reduce the taxable income, picked up from that source, that is correct.

Q. Then your answer would be yes, that it would have reduced that taxable income to the extent of the \$1600, on that item which you charge of \$2000, on the purchase of those bonds?

The Court: He just got through saying yes.

Mr. Robnett: Thank you.

Mr. Strong: Your Honor, I don't know whether he just got through saying yes to that same question. [670]

(Testimony of J. Bryant Eustice.)

The Court: I thought it was the same question.

Mr. Strong: May we have the witness answer it, just to make sure?

The Court: We have had too many questions repeated up to now. We have got to finish this trial. I don't mean to say that to be critical, Mr. Robnett. You have a duty to perform, and as long as the questions are appropriate under the law it is my duty to allow them to be answered.

Mr. Robnett: Thank you.

Going to an item you have testified to, I believe it was as to the purchase——

The Court: Are you coming to a new item?

Mr. Robnett: Yes, your Honor.

(Short recess.) [671]

The Court: Usual stipulation?

Mr. Robnett: Yes, your Honor.

Mr. Strong: Yes, your Honor.

Mr. Katz: So stipulated.

Q. (By Mr. Robnett): Mr. Eustice, you testified about an item of purchase of bonds in February, 1943, I believe the 15th of February, of \$750, which you said was unexplained funds, is that correct? A. Yes, sir; February 15, 1943.

Q. The total purchase price was \$750, was it not?

A. That is correct.

Q. And you said the total purchase price was unexplained funds, and that you charged it up as unaccounted for and unreported taxable income for 1943 of Sam Ormont. A. That is correct.

Mr. Robnett: May I have these two checks marked as the next exhibit?

(Testimony of J. Bryant Eustice.)

The Clerk: AA and BB.

Mr. Robnett: You can have the two as one.

The Court: If they are related, AA.

(The documents referred to were marked as Defendant's Exhibit AA for identification.)

Q. (By Mr. Robnett): I show you Exhibit AA, consisting of two checks of the Acme Meat Company to Sam Ormont, each for \$100, and ask [672] you to examine them and see if you have ever seen them before. A. I would said I had; yes.

Q. Do you have any record of those checks on your work sheets?

A. Not as individual checks; no, sir.

Q. Did you examine these during the course of your investigation and before you made your report? A. Yes, sir; I did.

Q. Did you at that time take into account the dates on these checks, the first one is dated 1-22-43, and it is No. 11,438, the other one is dated 1-29-43 and is No. 11,454. Did you consider those checks or the funds therefrom available to Mr. Ormont with which to purchase that bond, that \$750 bond?

A. No, I did not.

Q. What did you charge these up to?

A. I considered—could I see the checks again?

(The checks referred to were passed to the witness.)

The Witness: Well, either as funds of the Acme Meat Company deposited to his personal bank account or as funds available for personal expenses.

(Testimony of J. Bryant Eustice.)

Q. (By Mr. Robnett): Did you consider those as withdrawal of capital or as income by him? [673]

A. As a withdrawal of capital.

Q. Now do you say that in the year 19—referring again to Exhibit Y, which consists of eight \$100 checks by the Acme Meat Company, and seven of them drawn in late '42 and the eighth one drawn on January 8, 1943—I believe you have testified that those checks, constituting \$800, you considered as funds available for his income or personal expenses?

A. Yes, that is correct; if they were not deposited to the bank account, to his personal bank account.

Q. Do you have a record to see whether or not they were so deposited?

A. I have a record of the total checks from the Acme Meat Company that were deposited to his personal bank account.

Q. Does that show the checks, the dates of the checks, or anything of that sort?

A. Oh, no, it wouldn't show the dates of the checks. It shows the checks coming from his business bank account and being deposited to his personal bank account. There was only a difference of \$506.09 in the amount that I show drawn and the amount that was deposited. We can't have all of these checks that are not deposited. What I mean, there is an end to it some place. [674]

(Testimony of J. Bryant Eustice.)

Q. Do you have any deposits dated about the 23rd day of January, 1943? I guess it's the 13th.

A. 13th of January. No, there are none on that date.

Q. I understood you to testify before recess that as to these particular checks, Exhibit Y, amounting to \$800, and also as to X, a check of the United Dressed Meat Company for \$206.75, and a check to Sam Ormont, on his personal account of \$595.25, totaling \$1600, that you credited them as to his living expenses or personal expenses?

A. Yes, as funds available.

Q. And you now say, as to Exhibit AA, that you did the same with these two \$100 checks?

A. Yes. I didn't pick them out individually, out of the totals.

Q. All of those checks you have just referred to, in Exhibit X, Y and Z, totaling \$1,600, and AA, totaling \$200, you will observe were all cashed or deposited in the month of January, 1943, is that correct?

A. Yes, that's correct, in 1943.

Q. So you attributed to his living expenses, for the month of January, 1943, that total amount of about \$1800, did you?

A. No, I didn't attribute any part of any particular month for living expenses.

Q. That was when he received them? You saw that, [675] didn't you? And you say you did attribute them to living expenses, and not funds with which to purchase bonds?

(Testimony of J. Bryant Eustice.)

A. Yes, the difference he drew from the Acme, and the amount he deposited to his personal bank account.

Q. I am referring to the ones, according to your charges, that were not available to purchase bonds, but they were available to charge to his living or personal expense account, isn't that what you said?

A. Yes, they would be considered so in the total.

Q. And you attributed that amount of money to his living, personal expenses, for the month of January, 1943, didn't you?

Mr. Strong: Objected to. The witness said he didn't.

The Court: He said he did not attribute them to the month. I think counsel might reserve that for his argument to the jury, rather than to the witness.

Mr. Robnett: Thank you.

Q. You testified concerning the \$1000 bond purchased in February. I don't know that I have it here. On this is 17 and a correction, 27. I don't know which is correct; either the 17th of February or the 27th of February, 1943?

A. There is one February 17, 1943.

Q. A \$1000 bond, wasn't it? A. Yes.

Q. And that bond was in the name of Sam Ormont and Sue [676] Kosdon, was it not?

A. That is correct, yes, sir.

Q. Did you attempt to trace out from any source, of Sue Kosdon's accounts, whether or not she paid any sum on that bond?

A. The answer is no.

(Testimony of J. Bryant Eustice.)

Q. You did not? A. No, sir.

Q. You charged the entire purchase price of that bond against Mr. Ormont, did you?

A. I didn't take any part of this into income, if that is what you are referring to.

The Court: Just answer the question.

Q. (By Mr. Robnett): Did you charge it to Mr. Ormont—the cost of that bond?

A. I really don't know what you mean.

Mr. Strong: I object——

The Court: Objection overruled. Did you assume it was Sam Ormont's money?

The Witness: I assumed that it was his money, and that it was his bond, yes, that was purchased.

Q. (By Mr. Robnett): You never talked to Sue Kosdon about it at all, did you?

A. No, I talked to Sam Ormont. [677]

Q. Had you charged the whole price of that bond to him?

The Court: He just answered that.

Mr. Robnett: All right. Thank you.

Now you testified also—I believe you did at least—as to a check that you found from Mr. Ormont's records to either Mr. Kosdon or Mrs. Kodson, did you not?

A. Yes, this was a check, I believe, this particular check was made from the personal bank account payable to Benjamin Kosdon, if I recall correctly.

Q. For \$750? A. That is correct.

(Testimony of J. Bryant Eustice.)

Q. Did you charge that \$750 as a loan to Mr. Kosdon or did you charge it up against Mr. Ormont as income?

A. I didn't charge any part of it as income; no, sir.

Q. How did you handle the transaction?

A. I considered it as funds available to purchase this particular bond, and so applied it.

Q. You applied it on that particular bond?

A. Yes, sir.

Q. Now did you find any record of a repayment of that \$750 by Mr. Kosdon to Mr. Ormont?

A. No, sir, I did not.

Q. Did you trace out a bond that was, or bond checks that were received, in the name of Mr. Kosdon for \$750 and some 64 cents that were transferred to Mr. Ormont? [678]

Mr. Strong: Objected to on the ground that there is no evidence that that is so.

Mr. Robnett: I am asking if he did trace out any such checks.

Mr. Strong: There is no evidence that there are such checks.

The Court: I take it that counsel is asking if he looked for any such check. I don't quite understand the question. Do you understand it?

The Witness: I believe he is asking me if I found a check from Mr. Kosdon to Mr. Ormont for \$750.

The Court: Is that what you want to know?

(Testimony of J. Bryant Eustice.)

Mr. Robnett: Not exactly that, your Honor. I am asking him if he examined the sale of a bond by Mr. Kosdon.

The Court: If he found the sale of a bond?

Mr. Robnett: Yes, if he found any records where Mr. Kosdon had received the cash for a government bond in the sum of \$750.64.

The Witness: No, sir, I wasn't inquiring into Mr. Kosdon's bonds.

Q. (By Mr. Robnett): You didn't go any further to find out whether that particular bond that was in the name of Sam Ormont and Sue Kosdon had ever been cashed?

A. I do not know if it has been cashed; no, sir.

The Court: Would that have made any difference in your calculations?

The Witness: It may have, your Honor.

Q. (By Mr. Robnett): You have testified, I believe, concerning a Series G bond for \$1,000 that was purchased in April, 1943.

A. April 22, 1943.

Q. The record shows April 12.

A. There was one April 12.

Q. A \$1,000 bond?

A. A \$1,000 bond.

Q. Now as to that bond, did you charge any of the cost of that bond to Mr. Ormont as income of unexplained funds?

A. Yes, sir; all of it.

Q. Do you have any record of a purchase of a similar bond, a \$1,000 bond, as of April 3, 1943?

A. No, I do not.

(Testimony of J. Bryant Eustice.)

Q. Your record does not indicate the date that the bond bears, does it?

A. Yes, it shows the date issued, the date purchased.

Q. It wouldn't show the date of the application necessarily, would it?

A. I don't believe it would necessarily.

Q. All right. That particular bond there that you say is for April 12, is that right? [680]

A. April 12, 1943.

Q. Was bought in the name of Sam Ormont and Mrs. Dora Goldberg, was it not?

A. Yes, sir.

Q. The cost of the bond was \$1,000?

A. \$1,000.

Mr. Robnett: I would like to have this marked as the next exhibit, please.

The Clerk: BB.

(The document referred to was marked Defendant's Exhibit BB for identification.)

Mr. Robnett: And this check marked also.

The Clerk: CC.

(The document referred to was marked Defendant's Exhibit CC for identification.)

Q. (By Mr. Robnett): I am going to ask you if, as to that \$1,000 bond, if you charged the entire cost of that as income of Sam Ormont because of unexplained funds.

A. That is correct.

(Testimony of J. Bryant Eustice.)

Q. And as taxable income too, did you?

A. Yes, taxable income.

Q. Did you make any search whatever of Mr. Ormont's bank account to determine whether or not he had paid any part of that bond from his bank account? [681]

A. Yes.

Q. What does your report show that you found, Mr. Eustice?

A. You mean from his personal checking account?

Q. Yes, personal checking account.

A. Well, I didn't find anything that I applied to the cost of that bond.

Q. You didn't find anything at all?

A. No, sir.

The Court: He didn't find anything to apply.

Mr. Robnett: Thank you.

Q. I now show you Exhibit BB and ask you to examine it. It is an application for United States savings bonds, Series G, and it's to be issued in the name of Mr. Sam Ormont or Mrs. Dora Goldberg, giving the address as 407 North Cornwall Street, it looks like, Los Angeles, Cal., bearing date 4-3-43, and I will ask you to examine that.

A. Yes, sir, it is as you state.

Q. That is for a \$1000 bond, isn't it?

A. That is correct.

Q. And that corresponds, although it is a few days earlier, to the application for \$1,000, which you have testified to, of April 12, 1943, doesn't it?

A. Yes, it corresponds in amount to that bond.

(Testimony of J. Bryant Eustice.)

Q. In your opinion that probably is the application for that bond?

Mr. Strong: That is objected to.

The Witness: It could be, yes.

The Court: What is that?

Mr. Strong: I object to a question based upon opinions concerning these matters.

The Court: That is all he has been expressing.

Mr. Strong: Not as to documents he has never seen before, your Honor. [683]

The Court: He has expressed his opinions here pretty considerably.

Mr. Strong: On the basis of what he examined. He has never seen that document.

The Court: Do you have any record of any other bond being purchased on or about that date?

The Witness: No, sir.

Mr. Robnett: I offer it in evidence, if the Court please.

Mr. Strong: No objection.

The Court: Admitted.

(The document referred to was marked as Defendant Sam Ormont's Exhibit BB and was received in evidence.)

Q. (By Mr. Robnett:) I show you Exhibit CC, which is a check dated 4-3-43, being check No. 13, drawn on the Huntington Park Branch of the Security First National Bank of Los Angeles, by Sam Ormont, for \$249.26, and ask you to examine it.

A. Yes, sir.

(Testimony of J. Bryant Eustice.)

Q. Did you ever see that check before?

A. I must have seen it, yes, sir.

Q. You must have seen it? Did you take that check into account as being funds that were used on account of the purchase of the bond of \$1000 that you have testified to, as of April 12, 1943?

A. No, I did not. [684]

Q. You did not? What did you do after you examined this check, with regard to what application you made of it?

A. I have an indication here that it could have been used on the purchase of the bond, but I didn't identify any other corresponding item to go with it, so it was not taken into account or applied to any of these bonds.

Q. It was not applied to the purchase of any bonds? It wasn't taken into account at all?

A. No, not on the purchase of any bond.

Q. Did you consider this as a part of Mr. Ormont's living and personal expenses?

A. It must have got in there—yes, it would have gotten in there as a part of that, because I took the total expenditures that he had made, less the expenditures for other purposes, and considered the balance for personal——

The Court: When you said yes that answered the question. A. Yes.

The Court: You have said the other so many times.

The Witness: Yes, sir.

(Testimony of J. Bryant Eustice.)

Mr. Robnett: I offer this in evidence, if the Court please.

The Clerk: CC.

The Court: Admitted.

(The document referred to was marked Defendant Sam Ormont's Exhibit CC and was received in evidence.) [685]

Q. (By Mr. Robnett): You observed, did you not, that the check was made by Sam Ormont, and was payable to the Treasury of the United States?

A. Yes, sir.

Q. And yet you put it over into his personal expenses?

The Court: You can argue that question.

Mr. Robnett: All right. I would like to have these checks marked as the next exhibit. They are three.

The Court: All of them as one?

Mr. Robnett: Yes.

The Clerk: DD.

The Court: How many checks?

Mr. Robnett: Three.

(The documents referred to were marked Defendant Sam Ormont's Exhibit DD for identification.)

Mr. Robnett: I will now show you Exhibit DD, consisting of three checks of the Acme Meat Company to Sam Ormont. They are all dated in Feb-

(Testimony of J. Bryant Eustice.)

ruary, 1943. I will ask you to examine them. Have you seen those checks before?

A. I will say I have.

The Court: (To Mr. Strong) Have you seen these?

Mr. Strong: No.

Mr. Robnett: I am sorry. I am getting in a hurry again.

(Shows checks to counsel.)

Mr. Strong: That is all right. I was wondering if they were the same kind. [686]

Q. (By Mr. Robnett): You have seen those before, you say?

A. Yes, I would say I have seen those checks before.

Q. And when you examined the books and records and made your report of this matter, did you take those three checks into account as funds available to Mr. Ormont or the purchase of bonds or payment on account of purchase of any bonds?

A. No, I did not.

Q. What did you do with them or charge them up to?

A. Well, I considered them as drawing from his personal—I mean from his business bank account there.

The Court: As unexplained funds?

The Witness: No, your Honor. Possibly these got into funds that went into his personal bank account. I don't know without looking.

(Testimony of J. Bryant Eustice.)

Q. (By Mr. Robnett): Did you charge them up as withdrawal of capital from the Acme Meat Company by Sam Ormont?

A. Yes, I considered them such. That is what they were, withdrawals from capital.

Q. You didn't consider them income at all?

A. No, sir.

Mr. Robnett: Your Honor, I want to start another matter. I believe you said you intended to adjourn at 4:00 o'clock. [687]

The Court: Do you think you could finish the other matter in five minutes?

Mr. Robnett: No, I do not. That is why I mention it to your Honor.

The Court: Very well. We will recess until 10:00 o'clock tomorrow morning. Remember the admonition.

And it may be stipulated, counsel, that where I have neglected to advise the jury to remember the admonition that they may be deemed to have been admonished, and that they will be deemed to have been admonished?

Mr. Robnett: So stipulated.

Mr. Strong: So stipulated.

Mr. Katz: Yes, your Honor.

The Court: 10:00 o'clock tomorrow morning.

(Whereupon, at 4:00 o'clock p.m., an adjournment was taken until 10:00 o'clock a.m., Wednesday, June 4, 1947.)

Los Angeles, California, June 4, 1947

10:00 o'Clock A.M.

The Court: Ex parte?

The Clerk: Yes, your Honor.

(Other court matters.)

The Court: Any other ex parte matters?

The Clerk: That is all. Further trial.

The Court: United States v. Ormont and Him-
melfarb. Usual stipulation?

Mr. Strong: So stipulated.

Mr. Robnett: So stipulated.

Mr. Katz: So stipulated.

The Court: Mr. Eustice.

J. BRYANT EUSTICE

the witness on the stand at the time of adjourn-
ment, resumed the stand and testified further as
follows:

Cross-Examination

(Continued)

By Mr. Robnett:

Q. Mr. Eustice, I will put before you Exhibits
1, 2 and 3 in this case, which are income tax returns
in connection with Mr. Ormont's income. I wish
you would kindly refer now to the 1943 return,
which I believe is No. 3. A. No. 2.

Q. No. 2, yes. All right. That is the 1943 per-
sonal return, isn't it? [692] A. Yes, sir.

Q. I will ask you to turn to the back page of
that, to item 19, the item under 19. That was the
cancellation of tax, or what they call the forgive-
ness feature, isn't it? A. Yes, sir.

(Testimony of J. Bryant Eustice.)

Q. And the item there was \$2477.91, of which 75 per cent of it was \$1858.44 is the forgiven part, isn't that correct? A. That is correct.

Q. On the return? A. Yes, sir.

Q. Did you in any manner in your calculations of Mr. Ormont's 1943 return change that \$1858.44?

A. Yes, I did.

Q. Did you decrease it or increase it?

A. I decreased it, eliminated the forgiveness feature altogether.

Q. I beg your pardon?

A. I eliminated the forgiveness feature altogether.

Q. Altogether? A. Yes, sir.

Q. And therefore that increased the tax as you calculated it for 1943 to the extent of \$1858.44, did it not? A. Yes, sir, it would.

Q. You made absolutely no deduction on your calculations [693] and in arriving at the tax that you have claimed he owed for 1943, you made no deduction whatsoever for any cancellation of tax that was granted in 1943?

A. That is correct; no allowance of any forgiveness feature.

Q. Now on your calculations of the 1943 tax you had, instead of the amount reported by Mr. Ormont and paid by him for that year, how much additional tax that you claimed he owed for 1942?

A. How much additional for 1942?

Q. Yes, over the amount that he accounted for and paid. A. \$1397.93.

(Testimony of J. Bryant Eustice.)

Q. And what did it make—pardon me just a minute—1300 and how much? A. \$1397.93.

Q. That would be what you claim was additional tax for that year? A. Yes, sir.

Q. Which made, as you calculated it, the total tax for 1942 of how much? A. \$3875.84.

Q. \$3875.84? A. That is correct.

Q. As against the tax that he accounted for and paid of \$2477.91, is that correct?

A. Yes, sir, that is the tax he reported. [694]

Q. Now, refer if you will, please—I will give you Exhibit 6, and ask you to examine that.

A. Yes, sir.

Q. You have seen that before, haven't you?

A. Yes, I have.

Q. And that is the partnership return of income for 1944, or the fiscal year beginning May 1st, 1944, and ending April 30, 1945, is it not?

A. That is correct.

Q. And it is of Sam Ormont and Phillip Himelfarb? A. That is correct.

Q. And it shows a total income that they reported as \$71,388.84?

A. Yes, sir, that is correct.

Q. In your calculations of the 1944 tax of Sam Ormont, did you use this return of which Exhibit 6 is a photostat? A. No, sir, I did not.

Q. Did you refer to it at all?

A. Well, I referred to it, but I didn't enter it into my computation.

Q. You didn't at all? A. No, sir.

(Testimony of J. Bryant Eustice.)

Q. In no manner? A. No, sir.

Mr. Robnett: Mr. Strong has been kind enough, at my [695] request, to give me a photostatic copy of the individual tax return of Sam Ormont for 1945, which I would now like to have marked the next exhibit.

The Clerk: EE.

(The document referred to was marked Defendant's Exhibit EE for identification.)

Mr. Robnett: And counsel has agreed that I may put it in evidence.

Mr. Strong: That is correct.

Mr. Robnett: As EE.

The Court: In evidence.

(The document referred to was received in evidence and marked Defendant's Exhibit EE.)

Q. (By Mr. Robnett): I now show you Exhibit EE in this case, which is an individual income tax return for the year 1945 by Sam Ormont, and ask you if you have ever seen the original of that? A. I don't believe I have, no, sir.

Q. You did not ever see it? A. No, sir.

The Court: Did you ever see a photostatic copy or a copy?

The Witness: I don't recall that I have, your Honor. It was not part of my examination.

Q. (By Mr. Robnett): In making your calculations for 1944 you did know, [696] that the partnership or joint venture return of Sam Ormont and Phillip Himmelfarb for the fiscal year com-

(Testimony of J. Bryant Eustice.)

mencing May 1st, 1944, and ending April 30, 1945, of an aggregate income of \$71,388.84, had been filed before you completed your report?

A. Yes, sir, I knew that.

Q. You knew that? And you also knew, did you not, that the report divided the sum of \$71,388.84 equally, and allocated exactly one-half of that to Sam Ormont as his portion of that income?

A. Yes, sir, that is correct.

The Court: You say you knew that?

The Witness: Yes, your Honor, I knew that.

Q. (By Mr. Robnett): You also knew from that, did you not, that the income represented in that report for that fiscal year from May 1st, 1944, and ending April 30, 1945, embraced eight months of the year 1944?

A. That is correct, that covers eight months of 1944.

Q. Did you, in your 1944, include in your calculations income of Sam Ormont from that source, or any source during those months from May 1, 1944, to and including December 31, 1944?

A. Yes, sir, I did. [697]

Q. You took into consideration a part of the income then for those eight months of this \$35,-694.42 referred to in this Exhibit 6, you took a part of that into consideration as 1944 income, did you?

A. Yes, part of that was included in the——

Q. Can you tell me——

Mr. Strong: The witness hasn't finished, your Honor.

(Testimony of J. Bryant Eustice.)

Mr. Robnett: Pardon me.

The Witness: I said, yes, part of it was included in the 1944 return.

Q. (By Mr. Robnett): Can you tell me now how much of that \$35,694.42 shown in Exhibit 6 as being allocated to Sam Ormont as his portion of that income was taken into account by you in fixing the amount of income of Sam Ormont that you claimed was 1944 income?

Q. It would be my total adjustment, less the amount of additional income that I picked up for the four preceding months. That would, I say, in even amounts be about \$5000.

Q. Which would amount to about that?

A. That I picked up in my computation about \$5000 addition income from January 1, 1944, to May 1, 1944.

Q. Around \$5000 for those four months?

A. Yes, sir.

Q. Then all the balance of the income that you calculated [698] for Sam Ormont for 1944 was the income referred to in Exhibit 6, wasn't it?

A. That could explain the source of that income, that it was what he reported on Exhibit 6.

Q. Now will you tell me what was the total income you calculated for Sam Ormont for 1944, taxable income I am referring to.

The Court: The gross?

Mr. Robnett: Yes, the gross taxable income.

The Court: Gross income?

(Testimony of J. Bryant Eustice.)

The Witness: The net income. We have been talking about net income.

Q. (By Mr. Robnett): This item I believe was net income and I want to eventually get to the net income. I think we can go directly that way instead of going to the gross. Give me what you found as the net taxable income.

A. The corrected net income was \$36,982.52.

Q. \$36,982.52? A. Yes, sir.

Q. Now that was not the amount you found was unaccounted for but that was the total that you determined was a taxable income for that year, was it? A. Yes, sir; that is correct.

Q. And how much did you find that Mr. Ormont accounted [699] for for the year 1944?

A. \$12,174.57.

Q. I will ask you to look at Exhibit EE, which is Mr. Ormont's 1945 income tax return, and tell us what you find there as to the total net income reported by Mr. Ormont for that year.

A. He shows \$62,458.59. That is the adjusted gross income.

Q. What did you say?

A. His adjusted gross income for 1945—well, it is approximately the same.

Q. You mean the net income is approximately the same as the adjusted gross?

A. Yes, in this case.

Q. All right. Now what do you find from that that he reported as the total tax payable by him for the year 1945? A. \$37,301.46.

(Testimony of J. Bryant Eustice.)

Q. Now, Mr. Eustice, do you have one of the Government pads there that we might use freely?

A. I have one here.

Q. Before I get to that, one other question: Does not that 1945 report, which is Exhibit EE, show the income of Sam Ormont from the Acme Meat Company separately from the income of Sam Ormont from the joint venture with Phillip Himmelfarb? A. I guess I got the wrong one.

Q. Yes, better look at Exhibit EE.

A. Yes, sir; separately. [701]

Q. And how much does it show from the Acme Meat Company's and Mr. Ormont's income?

Mr. Strong: I have not objected to this reading from documents in evidence, but the document is in evidence, and I don't see any particular purpose in having the witness constantly reading from it.

The Court: It is cross examination of the witness. I think it is proper, and these questions are preliminary to some other questions.

The Witness: The net income is \$25,364.17, from the Acme Meat Company.

Q. (By Mr. Robnett): How much from the joint venture? A. \$35,694.42.

Q. Now, Mr. Eustice, I will ask you this: As an expert in calculating income taxes, is it not a fact that had Mr. Ormont accounted and reported the income for 1944 in the manner, which a large portion of it, as you claim, would have been embraced in Exhibit 6, in the manner in which you have

(Testimony of J. Bryant Eustice.)

calculated it, if it isn't true that then it would have reduced the amount of income reportable by him and payable by him in 1945 to the extent that you have testified, of something over \$30,000?

The Court: Did you understand the question? I don't follow it. [702]

Mr. Strong: I don't either.

Mr. Robnett: I am sorry, your Honor.

The Court: It has to be simple for me to understand.

Mr. Robnett: I don't think so at all. I think it is very confusing, perhaps. I had in mind what I wanted, but didn't express it.

Q. In other words, you have said that of all but about \$5,000 of the amount you claim he should have reported on in 1945,—you took that, and it was the same as he reported, not in amount, but it was embraced in Exhibit 6.

The Witness: What is Exhibit 6, if you please?

Mr. Robnett: I beg your pardon.

The Witness: I don't have Exhibit 6.

The Court: Himmelfarb and Ormont.

Mr. Robnett: That is the joint venture.

The Court: Do you have Exhibit 6 there?

Mr. Robnett: Pardon me. I have it. I will re-frame the question.

Q. All but about \$5,000 of Mr. Ormont's income for 1944, which you had calculated, of which \$5,000 or thereabouts was for the year 1944——

A. Yes, sir.

(Testimony of J. Bryant Eustice.)

Q. All the balance of it which you calculated would be embraced in Exhibit 6?

A. I believe that is correct. [703]

Q. I want to ask you if, as a matter of fact, supposing Mr. Ormont had reported his income, as you have figured it, for 1944, then, is it not true that in his 1945 income report, his income, his taxable income would have been reduced in an amount of approximately \$24,000?

A. It would have been reduced by the amount of the tax. I can explain it.

Q. Go ahead.

A. My additional income adjustment for 1944 was \$24,807.95. The amount of that figure I determined to represent income prior to May 1st, 1944, was \$5,550.19. Deducting that from my adjustment of 1944 of \$24,807.95, there would be a balance of \$19,257.76.

Q. \$19,257, and how many cents?

A. .76. I believe the answer to your question is, if this amount, which was included in the joint venture return, had not been reported in Mr. Ormont's 1945 income tax return, his tax for that year would have been reduced by the amount of income tax on the additional \$19,257.76.

Q. That isn't exactly it. I think it comes around the other way, perhaps. What I am asking is this: By including that nineteen thousand in his 1944 report, saying he had it filed as you say, it would necessarily be taken off of his income of 1945, then, wouldn't it, that amount of \$19,257.76?

(Testimony of J. Bryant Eustice.)

Mr. Strong: I object to that upon the ground that there [704] is no showing that the nineteen thousand is the same as that reported. It may be entirely different.

The Court: Objection overruled. It is a hypothetical question. Do you remember the question?

The Witness: No, your Honor.

The Court: Read it, Mr. Reporter.

(Question read by the reporter.)

A. That is correct. That amount of income would then be taken off of his 1945 individual return.

Q. And it, of course, reduced his tax for 1945?

A. Yes, by the tax on that amount.

Q. I will ask you this: Assuming that he had that reported, that \$19,257.76, as additional income in 1944, which, as you say, in return would have reduced his 1945, is it not a fact that the joint tax that he would have paid, that is, the aggregate tax, I should say, for 1944, and 1945, would have been \$3,000 less than the way he did report those items, and did pay, in 1944 and 1945?

A. Yes, it would have been less, because he was in a higher tax bracket in 1945.

The Court: What do you want the witness to do now?

Q. (By Mr. Robnett): I would like to have you make, if you will, your own calculations for 1944. You have those figures already, I assume, have you? A. What his tax is for 1944?

(Testimony of J. Bryant Eustice.)

Q. What you claim it is.

The Court: What you claim it is for 1944.

The Witness: Yes, what I claim it is, your Honor.

Q. (By Mr. Robnett): You have that already figured? A. It is already figured.

Q. Now will you take the return of 1945 of Sam Ormont that is before you and take off of that—

The Court: \$19,259.76.

Mr. Robnett: 257.76, I believe. There is \$2 difference.

Q. Will you do that, please, and then calculate what his 1945 income tax would have been?

A. (Making calculation.) Yes, sir, I can give you the answer on that.

Q. All right. What is it?

A. In checking it back, I think it is correct; without having anybody check my computations I believe it is correct.

Q. What do you calculate there would have been as his 1945 tax? [706] A. \$23,524.59.

The Court: What was paid?

The Witness: The tax shown here was \$27,301.46.

Q. (By Mr. Robnett): Now will you take that figure, the \$23,000 plus that you have there, and add it to the tax as you calculated he should have paid in 1944. You have that all figured.

A. Add it to the tax?

Q. To this last item.

The Court: You claim his tax on the corrected net income was \$18,143.12. Is that the figure you want him to add?

(Testimony of J. Bryant Eustice.)

Mr. Robnett: Yes, that would be it. Thank you, your Honor.

The Witness (making calculation): That is \$41,667.71.

Q. (By Mr. Robnett): That item would represent, would it not, according to the way you say these income tax should have been reported and paid, would represent his total income tax due and payable for the years 1944 and 1945?

A. Yes, sir.

Q. Is that correct? A. Yes.

Q. What was that figure again?

A. \$41,667.71.

Mr. Robnett: If the Court please, Mr. Strong has [707] agreed to stipulate with me that on or about March 15, 1945, Sam Ormont paid the sum of \$906.65 on his estimate of the income tax for 1945;

That on June 15, 1945, or thereabouts, he paid another \$906.65 on such estimate for 1945;

And on or about September 15, 1945, he paid the sum of \$17,153.35 on said estimate;

And on January 15, 1946, or thereabouts he paid \$11,933.35 on account of said 1945 estimated tax;

Making a total payment on such estimates of \$13,900.

Mr. Strong: So stipulated.

Mr. Robnett: I notice, Mr. Strong, that we have reported here 30 cents in addition to that.

Mr. Strong: I think the addition on \$13,900 was added away by 30 cents, but I don't think counsel is going to make a point of that.

(Testimony of J. Bryant Eustice.)

Mr. Robnett: No, we won't.

Mr. Strong: That's the taxpayer's addition, not the Government's.

The Court: There seems to be something wrong with the Government's addition in some of these figures because the figures being quoted by the witness do not correspond by a few dollars or a few cents with these tables which you presented.

What are we waiting for now? [708]

Mr. Robnett: I am trying, your Honor—counsel didn't have the facts here for the further sum to be paid and I thought maybe I had the check here to show that it was made.

The Court: The total amount?

Mr. Robnett: Yes, the total amount that was paid.

The Court: Very well.

Mr. Robnett: Maybe I am incorrect, but if I am, correct me, but I understand that the record already shows that Mr. Ormont paid on his 1944 tax the amount he reported as due, namely, \$12,174.57.

The Court: No, that is the net income. He didn't pay \$12,000 in cash. [709]

Mr. Robnett: That is correct.

The Court: Let us see. You have here Sam Ormont's 1945 return?

Mr. Strong: Yes.

The Court: Is that EE?

Mr. Strong: Yes, your Honor.

(Testimony of J. Bryant Eustice.)

The Court: Let me see it a moment. Does this show the tax paid?

The Witness: The tax assessed, your Honor. It may show an amount paid on estimate.

The Court: I don't see any stamp here. \$37,301.

The Witness: May I see it a minute, your Honor? It shows \$30,900.30 was paid on the 1945 declaration of estimate, leaving a balance due of \$6401.16.

The Court: Is that the check you are looking for?

Mr. Robnett: That is the check, your Honor.

The Court: Have you got it?

Mr. Kosdon: No your Honor.

The Witness: This says: Received with remittance, March 16, 1946.

The Court: That would be——

Mr. Strong: Some evidence.

The Court: It would be a presumption that it was paid. In other words, the presumption is that the law was performed, and whoever put the stamp on here got the money before that [710] and that he paid the sum, the presumption is, of \$37,000.

Mr. Strong: Unless we dispute subsequently that it was paid.

The Court: At this stage, the presumption is that \$37,301.46 was paid by Sam Ormont for his 1945 tax, on March 15, 1946.

Q. (By Mr. Robnett): Assuming now that all of the taxes as reported by Mr. Ormont for 1944 and 1945 were paid, is it not a fact, Mr. Eustice,

(Testimony of J. Bryant Eustice.)

that the amount so paid by him was as much or more than the tax he would have owed had he accounted for those two years in the manner in which you say he should?

A. That is, without taking into consideration the \$5,550.19, which was not accounted for on the joint venture return, and therefore, not added.

The Court: No, his question is: Not taking that into account. All he wants now is the total of the figures of your calculation of the amount actually paid, that is \$37,301.46, plus the \$3,626.58; is that correct?

The Court: If that would not be more than the sum you calculated on the adjusted income as the sum you claim for 1944?

The Witness: It would have left this figure, I referred to, out of this computation.

The Court: You left that out? But take it on the basis [711] that counsel has asked now, that is \$19,257.56 off his income, you calculated his tax to be \$2,554.49?

The Witness: I see.

The Court: But he says to leave that \$19,000, and assume 1944 just the same as you claimed, his total tax due would be \$18,143.12. is that right?

The Witness: Yes, sir, \$18,143.12.

The Court: His question is, the tax he actually paid in 1945, and the tax he actually paid in 1944, taken together, exceed the amount you claim is due for 1944, and the amount that would have been due in 1945, less the \$19,000?

(Testimony of J. Bryant Eustice.)

The Witness: I believe it would. We haven't added them together.

Q. (By Mr. Robnett): Can you calculate it there quickly? I don't want to take up too much time.

The Witness: The figure, I believe, your Honor, is on that.

The Court: I beg your pardon. It is \$37,301.46. It is simply the addition of \$37,301.46 and \$3,626.58, isn't it?

The Witness: What figure?

The Court: You say here: Tax disclosed per return, \$3,626.58 for 1944.

The Witness: Yes, that is correct, your Honor. That is \$40,928.04. [712]

Q. (By Mr. Robnett): And that is as much or more, is it not, than the amount you claim he should have paid in 1944?

A. The other figure we had was \$41,667.77.

The Court: Or \$47,301.46 difference, about?

The Witness: Yes.

Mr. Strong: I understand this is all based on an assumption.

The Court: That is correct, based on the assumption that the 1945 return did include the \$19,259.76, which the witness says he put into the 1944 return.

Mr. Strong: But he did not say it was the same sum.

Mr. Robnett: Pardon me, your Honor, but I understood the evidence of the witness was to the

(Testimony of J. Bryant Eustice.)

effect that Exhibit 6 did include the nineteen thousand plus of income that he calculated in his calculations on the 1944 of Sam Ormont. It was not an assumption at all.

The Court: Exhibit 6 is——

Mr. Robnett: That is the joint venture return, showing \$35,000.00, something like that, to Sam Ormont, for that fiscal year from May 1st, 1944, to April 30, 1945. [713]

Mr. Strong: Your Honor, that was why I objected, that it is not the same sum.

The Court: I do not know that it did that. In any event, the witness has testified that \$19,000—whatever this figure is—of his adjusted increase for 1944 was income from that partnership, or joint venture.

The Witness: I can explain that, your Honor. I took into account this sum of \$19,257.76. I don't know of my own knowledge where it came from. The taxpayer, Mr. Ormont, told me that this additional income was income that he had received from the joint venture.

Q. (By Mr. Robnett): Now one other matter——

The Court: Excuse me. Mr. Strong has a matter in another court at 11:00 o'clock, so we will have the recess now. Remember the admonition.

(Short recess.)

The Court: Usual stipulation?

Mr. Strong: Usual stipulation.

(Testimony of J. Bryant Eustice.)

Mr. Robnett: Yes, your Honor.

Mr. Katz: Yes, your Honor.

The Court: Very well.

Mr. Robnett: I would like to have this document marked as the next exhibit. It is our office copy. Counsel has agreed we may use it subject to them correcting it if necessary. [714]

The Clerk: FF.

(The document referred to was marked Defendants' Exhibit FF for identification.)

Mr. Robnett: I am informed that the original of this document which is now marked FF was filed with the Collector of Internal Revenue at Los Angeles, California, on or before March 15, 1945. Subject to checking, counsel has agreed that I may use this copy. We do not have the original here.

Mr. Strong: That is right, your Honor.

The Court: Very well.

Q. (By Mr. Robnett): Mr. Eustice, I am showing you Exhibit 3, which is the photostatic copy of Sam Ormont's income tax for 1944, and I will call your attention to the third page and to the 12th item, which is interest on business indebtedness, \$817.42. I ask you, Mr. Eustice, did you disallow that item in your calculations of Mr. Ormont's 1944 income? A. Yes, sir.

Mr. Strong: That is objected to because this is an item purporting to be the income of some other person.

Mr. Robnett: No, not that one, Mr. Strong.

(Testimony of J. Bryant Eustice.)

The Court: He has asked him about Exhibit 3.

Mr. Strong: I am sorry. I thought it was Exhibit FF.

Q. (By Mr. Robnett): You did disallow that entirely, didn't you, as a [715] deduction?

A. Yes, sir.

Q. It was charged in the report as a deduction or expenses consisting of interest paid on indebtedness, isn't that correct?

A. Yes, interest on Sam Ormont's capital investment.

Q. That is the way you calculated it?

A. That is the way it shows on the books and records.

The Court: Is that the way you calculated it?

The Witness: I disallowed it on that account; yes, sir.

Q. (By Mr. Robnett): If that item of \$817.42 was paid to someone other than Mr. Ormont as interest on money loaned or on a loan, then that item should not be disallowed by you, should it?

A. No, it would not be disallowed.

Q. I now show you Exhibit FF, which is the individual income tax return for the year 1944 by Dora Goldberg, and ask you if you in your examination and determination of the income of Mr. Ormont for 1944 and the tax you claim he owed, you saw the original of that Exhibit FF.

A. No, sir, I did not.

Q. You did not investigate any returns by Dora Goldberg at all?

(Testimony of J. Bryant Eustice.)

A. No, sir, I did not. [716]

The Witness: That is the copy, is it not?

Mr. Robnett: That is the copy.

The Witness: It doesn't show the date it was filed, does it?

Q. No. It was filed some time before the 15th of March, 1945.

A. Does it say so here?

Q. No, it does not say so. That is just an office copy. I will ask you to look at this Exhibit F, and state if it is not a fact that that shows a report by Dora Goldberg of dividends or interest, in the sum of \$817.42?

A. That is correct.

Q. That amount is identical with the amount that you disallowed on Sam Ormont's return?

A. Yes, that's right.

Q. It shows a tax of \$53, doesn't it?

A. \$53.

Q. Thank you. I believe counsel is agreeable to stipulating that the \$53 tax on this Exhibit FF was paid by the taxpayer reported there.

Mr. Strong: Yes, subject to check.

Mr. Robnett: Thank you very much, Mr. Eustice, and that is all.

The Court: You had some further direct examination of this witness, I believe? [717]

Mr. Strong: Should I go into that first? I have some further direct, yes.

The Court: Your direct examination of this witness was interrupted, I think.

Mr. Strong: Yes. That was about something else.

(Testimony of J. Bryant Eustice.)

The Court: You were examining the witness on the Phillip Himmelfarb matter, or had begun?

Mr. Strong: That is right.

The Court: Are you going to continue on that, or are you going to direct your questions now to the redirect examination of this witness?

Mr. Strong: I will leave that to your Honor's discretion.

The Court: It is immaterial to me. I just want to know, so I will be able to rule in the event objections might be made.

Mr. Strong: I will start with a continuance of the direct examination as to Phillip Himmelfarb, and that may simplify matters.

The Court: Very well.

Mr. Robnett: As I understand, I have a standing or running objection to that evidence on the ground that it is incompetent, irrelevant and immaterial, hearsay as to the defendant Sam Ormont, and not binding upon him.

The Court: Is there any objection to that? You have not asked any questions yet. I think maybe you had better ask a [718] question, and then state your objection.

Mr. Strong: I will assume that the same sort of objection arrangement we had before would apply.

The Court: Very well. The defendant Ormont will not have waived any of his rights by his failure to object.

Mr. Strong: That is right.

(Testimony of J. Bryant Eustice.)

Direct Examination
(Continued)

By Mr. Strong:

Q. Mr. Eustice, directing your attention to income tax return of the defendant Phillip Himmelfarb for the year 1944, which is Government's Exhibit 4, and also I will give you Government's Exhibit 5, which is the income tax return for the year 1944 for Mrs. Phillip Himmelfarb, Ruth Himmelfarb, I direct your attention to Phillip Himmelfarb's return, and I now ask you whether you made any investigation as to the income tax return filed by Phillip Himmelfarb for that year?

A. Yes, sir, I did.

Q. And in connection with that investigation, will you state what books or records you used?

Mr. Katz: That is objected to as incompetent, irrelevant and immaterial; no foundation laid, if the Court please, and not bearing on any issue in this case. It has been asked and answered.

The Court: I have forgotten whether or not it has been asked and answered. I don't think it is incompetent, or [719] irrelevant or immaterial. If it has been asked and answered it will not hurt for him to answer it again, so he can get back on the track. Objection overruled.

A. I examined the books and records of the Acme Meat Company.

Q. (By Mr. Strong): Is that all?

A. I examined other records, but in my determination of the defendants' correct tax——

(Testimony of J. Bryant Eustice.)

The Court: What other records? You said you examined other records. Now counsel wants to know what records you examined.

The Witness: The bank record, and things I had in my work papers the other day, which I believe were taken out of evidence as I did not use them in the determination of the defendants' correct tax.

Q. (By Mr. Strong): Did you examine any bank records?

A. I made a list of some of these bank records but they were not——

Q. Just answer what you examined without going into an explanation, please.

Mr. Katz: Counsel prefers explanations, if the Court please.

Mr. Strong: At the appropriate time, your Honor please. This isn't it.

The Court: An appropriate explanation?

Mr. Strong: Yes. This isn't appropriate.

Q. All I want to know is what books and records you examined.

A. The books and records of the Acme Meat Company, and I also examined this joint venture income tax return.

Q. That is Government's Exhibit 6?

A. Yes, sir.

Q. And you examined the income tax return of Phillip Himmelfarb, which is before you?

A. That is correct.

Q. How about the return of Ruth Himmelfarb?

A. I also examined that return.

(Testimony of J. Bryant Eustice.)

Q. Now in connection with the books and records of the Acme Meat Company, where did you examine those books and [721] records?

A. In the office of the Acme Meat Company.

Q. Do you have those books and records now?

A. I do not have them; no, sir.

Q. Where did you leave them?

A. In the office of the Acme Meat Company.

Q. Did you discuss with the defendant Phillip Himmelfarb any portion of those books and records that you were examining?

Mr. Katz: Objected to, if the Court please, as incompetent, irrelevant and immaterial. It has no bearing on any issue in this case. No conversation is admissible and no corpus delicti has been established.

Mr. Strong: This is preliminary as to the records, your Honor.

The Court: You may answer that question yes or no. The objection is overruled to that question.

The Witness: May I have the question again?

(The question referred to was read by the reporter as follows:

“Q. Did you discuss with the defendant Phillip Himmelfarb any portion of those books and records that you were examining?”)

The Witness: Yes, sir; I did. [722]

Q. (By Mr. Strong): Which page or pages did you discuss with him?

(Testimony of J. Bryant Eustice.)

Mr. Katz: Objected to, if the Court please, as incompetent, irrelevant and immaterial, no bearing on any issue; conversations are not admissible on the ground that there is neither foundation nor corpus delicti.

The Court: When you asked him which pages he discussed, why then you are getting into the substance of the conversation.

Mr. Strong: Not yet. May I state to your Honor something further? May I say something further?

The Court: I think maybe if you have any argument to suggest that it best be made out of the presence of the jury.

Mr. Strong: But I am not arguing. I just want to state that it is for the purpose of identifying the document. I am not going into its contents.

The Court: I know that, but if it is for the purpose of identifying the document then you are getting into what he said to Himmelfarb and what Himmelfarb said to him.

Mr. Strong: No.

The Court: You cannot help it, otherwise you cannot identify it. The objection is sustained, no foundation laid for the conversation.

Q. (By Mr. Strong): Did you make a record of that portion of the books [723] and records which you examined which you testified to which relates to the defendant Phillip Himmelfarb?

Mr. Katz: Objected to, if the Court please, as not the best evidence. The witness has already

(Testimony of J. Bryant Eustice.)

testified that his records were not used. His records are records that he is not permitted to use. There is no foundation laid. It is incompetent, irrelevant and immaterial.

Mr. Strong: He didn't testify to that, your Honor.

The Court: Do you have that transcript reference there where there was something concerning that in connection with his work papers?

Mr. Strong: But I am not asking him about his work papers.

The Court: I know, but when you are asking about his work papers there was something said at the time about using the records of the Acme Meat Company and copying them into his work papers, and the witness said something with relation to the fact that he didn't use his work papers.

Mr. Strong: Which is a Government exhibit marked for identification.

The Court: Yes.

Mr. Strong: I am not talking about those.

The Court: I know what you are talking about.

Mr. Katz, will you supply the reference?

Mr. Katz: Yes, I believe I have it here. It is in [724] Volume IV and commencing at about 353, 354 and particularly 355 and 356.

Mr. Strong: Since it is 20 minutes to 12:00, and there is a possibility of argument, may it not safe time if we take the matter up now outside of the hearing of the jury so we may proceed more rapidly later?

(Testimony of J. Bryant Eustice.)

The Court: You mean you can proceed with other matter?

Mr. Strong: No, I can proceed with argument on this matter.

Mr. Katz: Pages 363 and 364, there is some testimony, some answers in response to questions that were put to the witness by your Honor.

The Court: Yes.

Now read the question.

(The question referred to was read by the reporter as follows:

("Q. Did you make a record of that portion of the books and records which you examined which you testified to which relates to the defendant Phillip Himmelfarb?")

The Court: The objection is overruled. You can answer that yes or no.

The Witness: Yes, sir.

The Court: What books and records do you mean now?

Mr. Strong: Of the Acme Meat Company. [725]

The Witness: Yes, sir.

Mr. Strong: May I see them?

The Court: Are those in your work papers, Exhibit 41?

The Witness: I believe it is in 40, your Honor.

The Court: Because you testified that you did not use your working papers.

Mr. Strong: No. 41.

The Court: "Any of these work papers in the determination—I did not use any of these work

(Testimony of J. Bryant Eustice.)

papers in the determination of the defendant's income."

Mr. Strong: We were talking about 41, your Honor. That was what the voir dire was on.

The Witness: The account, your Honor, that he refers to I have in Exhibit 40, the work papers of Sam Ormont.

Q. (By Mr. Strong): You have those work papers before you? A. Yes, sir.

Q. Now as to the figures——

The Court: Exhibit 40 is in evidence.

Mr. Strong: I think it is for identification.

The Court: Yes, it is for identification.

Q. (By Mr. Strong): As to those figures which were contained upon the records of the Acme Meat Company with reference to Phillip Himmelfarb which you examined and concerning which you have [726] just testified, and you have there a transcript or summary, did you discuss any of those figures with the defendant Phillip Himmelfarb? A. Yes, sir.

Mr. Katz: If the Court please, I renew the objection that there is no foundation laid, it is in-6—Himmelfarb—folio Horton—12/15 Sprague competent, irrelevant and immaterial, that it is not the best evidence and, if the Court please, discussions are inadmissible until the corpus delicti has been established.

The Court: He isn't asking what the discussion is yet in this question. He said, did you discuss it with him. He can answer that yes or no. He he

(Testimony of J. Bryant Eustice.)

says "no" then we do not have to worry about any more questions.

The Witness: Yes. [727]

Q. And did you discuss with Mr. Himmelfarb the accuracy of those figures? A. Yes, sir.

Mr. Katz: Objected to, if the Court please. It is the same objection. He is asking the question whether he discussed the accuracy, which calls for the matter that was discussed.

The Court: That is right. Objection sustained.

Mr. Strong: May I be heard on that before your Honor sustains it?

The Court: Sustained.

Mr. Strong: Without hearing me?

The Court: You have not laid any foundation.

Mr. Strong: This is it. That is why I suggested we might have an argument before.

The Court: You can't lay the foundation by giving any substance of the foundation. You asked him if he discussed these figures with him and he said yes. You have got to lay the foundation before anything they said to one another, whether as to the accuracy, or anything else, can be introduced. Then I have to decide whether or not the foundation is good enough.

Q. (By Mr. Strong): When did this discussion take place?

A. The latter part of November, 1945.

Q. Where did it take place? [728]

A. In the office of the Acme Meat Company.

Q. I can't hear you.

(Testimony of J. Bryant Eustice.)

A. In the office of the Acme Meat Company.

Q. Who was present?

A. Mr. Himmelfarb, Mr. Phoebus and myself.

Q. Did you have the books and records that you were examining there at that time?

A. Yes, they were before us.

Q. Did you discuss with Mr. Himmelfarb the accuracy of the figures relating to Himmelfarb, as shown by those books and records of the Acme Meat Company?

Mr. Katz: Objected to, if the Court please. I renew my objection. If necessary, I will repeat it in full. It is the same objection that has just been made.

Mr. Strong: This is preliminary, your Honor.

The Court: I am thinking about the sufficiency of your foundation. When was that conversation?

The Witness: The latter part of November, 1945.

The Court: What is said in the testimony in the record, if there is any in the record, about the incorporation of the Acme Meat Company?

Mr. Strong: That was in 1947.

Mr. Robnett: 1946, your Honor.

The Court: It was after November, 1945. What is the testimony in the record about who owned the Acme Meat Company [729] in 1945, September of 1945?

Mr. Robnett: Mr. Sam Ormont.

The Court: He was the sole owner of the Acme Meat Company?

Mr. Robnett: Yes.

(Testimony of J. Bryant Eustice.)

The Court: The objection will be overruled, as to the defendant Himmelfarb. The objection will be sustained as to the defendant Ormont. None of this line of testimony will be received or considered by you in connection with the defendant Ormont unless I otherwise indicate by a ruling.

Mr. Strong: May we have the question read to the witness?

(Question read by the reporter.)

The Court: On second thought, I don't think there is sufficient foundation laid for that conversation.

Mr. Strong: I will ask some more questions, if I may.

The Court: All right. I will sustain the objection upon the ground that there is no sufficient foundation.

Q. (By Mr. Strong): Did you show Mr. Himmelfarb any of the records of the Acme Meat Company on that occasion? A. Yes, sir.

Q. Did you show him any particular part of the records? A. Yes, sir.

Q. Will you state whether the page had any heading or identification in any way, that you showed him? [730] A. Yes.

Mr. Katz: I object to that, if the Court please. The page would be the best evidence of what it contained.

The Court: There is no sufficient foundation laid.

Mr. Strong: He is still talking with him.

(Testimony of J. Bryant Eustice.)

The Court: There isn't a sufficient foundation to permit the conversation.

Mr. Strong: Can I argue it in the presence of the jury?

The Court: No.

Mr. Strong: I can't argue?

The Court: Did you tell Mr. Himmelfarb that you were an Internal Revenue Agent?

The Witness: Yes, sir, I did.

The Court: Did you show him any credentials?

The Witness: Yes, sir.

The Court: Did Mr. Phoebus?

The Witness: He had been on the case before me. I couldn't say, your Honor.

The Court: You don't know?

The Witness: I don't know.

The Court: There still isn't sufficient foundation.

Mr. Strong: I will withdraw him, and put on Phoebus.

The Court: All right. Step down for the moment.

(Witness temporarily excused.) [731]

SAMUEL J. PHOEBUS

a witness called on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name, sir?

(Testimony of Samuel J. Phoebus.)

The Witness: My name is Samuel J. Phoebus.

The Clerk: P-h-o-e-b-u-s?

The Witness: Yes.

Direct Examination

By Mr. Strong:

Q. What is your occupation?

A. I am Special Agent with the Bureau of Internal Revenue.

Q. How long have you had that job?

A. Roughly, two years.

Q. When did you start?

A. July 1st, 1945.

Q. Subsequent to July 1st, 1945, did you have occasion to investigate, in your official capacity, the income tax return of the defendant, Phillip Himmelfarb, for the year 1944? A. I did.

The Court: With relation to a possible criminal violation?

The Witness: No, sir.

Q. (By Mr. Strong): What was the nature of your investigation? [732]

A. We were determining whether or not he had paid his proper tax.

Q. And did you have occasion to speak to the defendant Phillip Himmelfarb at any time in connection with that investigation? A. I did.

Q. When was the first time?

A. I first met Mr. Himmelfarb——

Q. Just the date.

(Testimony of Samuel J. Phoebus.)

The Court: No. Just on what date?

The Witness: May 18, 1945.

Q. (By Mr. Strong): Where was that?

A. At the plant of the Acme Meat Company.

Q. Did you tell Mr. Himmelfarb who you were?

A. At that time I didn't, no.

Q. Did you ever tell him? A. I did.

Q. When was the first time?

A. I would say it was May 23rd.

Q. What year? A. 1945.

Q. What did you tell him at that time?

Mr. Katz: I object to that as incompetent, irrelevant and immaterial, and having no bearing upon the issues in this case; [733] no proper foundation laid.

The Court: He asked him what he told the defendant Himmelfarb; not what the defendant Himmelfarb told him.

Mr. Strong: Yes.

The Court: Objection overruled.

The Witness: I told him we contemplated making an examination of his income tax returns.

Q. (By Mr. Strong): Did you tell him who you were?

A. I told him who I was, and showed him my identification, I believe. My memory is not too clear on that, whether or not I showed him my identification. I had already identified myself to other people there in the plant.

The Court: But not to Himmelfarb previously?

(Testimony of Samuel J. Phoebus.)

The Witness: My recollection on that is not clear, no, sir.

Q. (By Mr. Strong): Are you speaking now of showing your identification?

A. Showing my identification.

Q. Did you tell him at any time who you were?

A. I can't say that I did tell him.

The Court: At any time?

The Witness: At any time.

Q. (By Mr. Strong): Did you discuss with him his income tax returns for [734] the year 1944?

Mr. Katz: I object to that, if the Court please, as immaterial.

The Court: Objection sustained.

Mr. Strong: May I be heard on that?

The Court: You have not laid any foundation.

Mr. Strong: This is part of it.

The Court: I can't help it. You have not laid any foundation. Objection sustained. [735]

The Court: You were present with Mr. Eustice on the date he mentioned—when was that, Mr. Eustice?

Mr. Eustice: The latter part of November, your Honor.

The Court: In November, 1945, on that date?

The Witness: I was, your Honor, yes.

The Court: When you and Mr. Eustice discussed the matter with Mr. Himmelfarb?

The Witness: I was there at that time.

The Court: Did either you or Mr. Eustice at any

(Testimony of Samuel J. Phoebus.)

time state to the defendant Himmelfarb that any statements he might make or disclosures concerning his business might be used against him in a criminal prosecution?

The Witness: On that occasion no statements like that were made; no, sir.

The Court: You did not?

The Witness: No.

Mr. Strong: May I be heard on that?

The Court: No. Proceed.

Mr. Strong: That is all of this witness.

The Court: Step down.

(Witness excused.)

Mr. Strong: Mr. Eustice.

J. BRYANT EUSTICE

resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Strong:

Q. Did you ever discuss with the defendant Philip Himmelfarb what status he occupied with reference to the Acme Meat Company?

Mr. Katz: If the Court please, that is objected to as incompetent, irrelevant and immaterial, no foundation laid, no corpus delicti established.

The Court: The objection is overruled. It calls for a yes or no answer.

The Witness: Yes, sir.

Q. (By Mr. Strong): When was that?

(Testimony of J. Bryant Eustice.)

A. It was during, I would say, about the middle of November, the preliminary part of the examination that I was making.

Q. Who was present?

A. Mr. Phoebus, Mr. Himmelfarb.

Q. Was that the occasion you testified to before?

The Court: The latter part of November?

The Witness: I had had other discussions as to his relationship, I believe, prior to that date. If I recall correctly, it also came up in the discussion at this particular time, too.

Mr. Strong: I think, your Honor, I can save time by putting on some other witnesses who will be here at 2:00 [737] o'clock as to this phase, and this is only on the competency of the secondary evidence, that is all.

The Court: I understand. Do you wish to proceed with redirect examination of this witness on Mr. Robnett's cross-examination?

Mr. Strong: We only have seven minutes and I would rather keep it all together, if your Honor has no objection. I think it is more intelligible.

The Court: At 2:00 o'clock we have another matter coming up, so that the jury may be excused until about 2:30 before we will be ready to proceed. Remember the admonition.

(Whereupon, at 11:55 o'clock a.m., a recess was taken until 2:00 o'clock p.m. of the same date.) [738]